In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1162

FEDERAL POWER COMMISSION, PETITIONER

v.

NEW ENGLAND POWER COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Relevant Docket Entries

THE COMMISSION PROCEEDINGS

1970:	
November 25.....	Notice of Proposed Rulemaking issued in FPC Docket No. R-408.
1971:	
March 18.....	FPC Order No. 425 issued in Docket No. R-408.
May 14.....	Order Denying Rehearing issued in FPC Docket No. R-408.

THE COURT OF APPEALS PROCEEDINGS

1971:	
June 9.....	Petition for review filed by New England Power Company.
July 7.....	Petition for review filed by Independent Natural Gas Association of America.
July 13.....	Petition for review filed by Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
1972:	
August 15.....	Opinion and Judgment of Court of Appeals setting aside Order No. 427 as it relates to annual fees.
September 12.....	Petition of FPC for rehearing.
September 25.....	Order of Court of Appeals denying petition for rehearing.

RELEVANT DOCKET ENTRIES

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1971:
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September 12..... Petition of FPC for rehearing.
September 25..... Order of Court of Appeals denying petition for rehearing.

[1]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

[18 CFR, Parts 3, 32, 33,
34, 35, 36, 45, and 159]

Revision of Existing and	)	
Establishment of New Schedules	)	
of Fees to be Paid by Electric	)	
Public Utility Companies and	)	Docket No. R-408
Natural Gas Companies and for	)	
Miscellaneous Services Rendered	)	
by the Federal Power Commission	)	

NOTICE OF PROPOSED RULEMAKING
(November 25, 1970)

Notice is hereby given, pursuant to Section 553 of Title 5 of the United States Code that the Commission is proposing to amend its general rules and regulations under the Federal Power Act and the Natural Gas Act to revise the schedules of fees at present imposed in connection with the filing of certain applications by natural gas companies under the Natural Gas Act and to establish new schedules of fees and annual charges to be applicable to electric utility companies and natural gas producers and pipelines.

Any interested person may submit to the Federal Power Commission, Washington, D.C., 20426, not later than December 18, 1970, data, views, comments, and suggestions, in writing, concerning all or part of the amendments proposed herein. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submittals to the Commission should indicate the name, title, and mailing address of the person to whom communications concerning the proposal should be addressed, and whether the person filing them requests a conference at the Federal Power Commission to discuss the proposed amendments. The Commission will consider all such written submittals before acting on the matters herein proposed.

(2)

[2]

Annual charges have long been assessed against licensees of hydroelectric projects pursuant to Congressional direction contained in Part I of the Federal Power Act to require payment *inter alia* by them "in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part;" and "for recompensing it for the use, occupancy, and enjoyment of its lands or other property. . .".[1]

Additionally, Congress has by statute vested authority in all agencies of the federal government to prescribe fees or charges for services conferring benefits on persons subject to their jurisdiction so as to render such agencies as fully self-sustaining as possible. The pertinent provision which is included in Title V of the Independent Offices Appropriations Act for the Year Ending June 30, 1952 (65 Stat. 290, 31 USC 483a), reads as follows:

> It is the sense of the Congress that any work, service publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency (including wholly owned Government corporations as defined in the Government Corporation Control Act of 1945) to or for any person (including

[3]

> groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible, and the head of each Federal agency

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[1] In addition, licensees and holders of permits affected by a determination by the Commission of headwater benefits are required to pay to the United States the cost of making such determination. Provisions for such payments appearing in Section 10(e) and (f) were contained in the original Federal Water Power Act, 41 Stat. 1063, approved June 10, 1920. Implementing regulations appear in Part II of the Commission's Regulations Under the Federal Power Act, 18 CFR 11.20 *et seq.*

is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of any existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts: *Provided*, That nothing contained in this section shall repeal or modify existing statutes prohibiting the collection, fixing the amount, or directing the disposition of any fee, charge or price: *Provided further*, That nothing contained in this section shall repeal or modify existing statutes prescribing bases for calculation of any fee, charge or price, but this proviso shall not restrict the redetermination or recalculation in accordance with the prescribed bases of the amount of any such fee, charge or price.

Pursuant to such statute and to recommendations made at hearings before Congressional appropriation committees, we established by order our first schedule of fees (apart from those under Part I of the Federal Power Act) which were payable in connection with applications filed by natural gas pipeline companies for certificates of public convenience and necessity and for other authorizations as especially beneficial to the recipients of the services rendered in their processing. Order 317, F.R. 430, January 13, 1966, as amended by FPC Order 317-A, 31 F.R. 4890, March 24, 1966, Part 159 of the Commission's Regulations Under the Natural Gas Act, 18 CFR, Part 159.

Congressional appropriation committees have since requested further review of our fee schedules with a view to making increases or adjustments to offset in part the increasing needs for direct appropriations for agency operating expenses. S. Rept. No. 1375, 90th Cong., 2d Sess.; H. Rept. No. 1348, 90th Cong., 2d Sess. More recently, the Chairman of the Subcommittee on Independent Offices and Department of Housing and Urban Development of the Committee on Appropriations of the House of Representatives requested us to review our rate and fee structures with a view to charging gas and utility companies enough to sustain our administrative operations. Hearings, Independent Offices and Department of Housing and Urban Development Appropriations for 1971, 91st Cong., 2d Sess., Part 2, p. 951.

In compliance with the spirit of the 1952 Appropriation Act, Executive directives[2] and subsequent Committee recommendations, we have thoroughly reviewed the existing fee structure and the areas of our administrative operations which have not heretofore been subject to any charges. The fee schedules we propose to adopt have been prepared in the light thereof to meet the statutory objective of making the Commission "self-sustaining to the full extent possible", to recoup by way of payment into the Treasury of the United States the sums reasonably allocable to the estimated costs in FY 1971 of rendering the types of services performed by the Commission as reflected by costs experienced in FY 1970, and to allocate fees and charges as fairly and as equitably as practicable "taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts...".

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[2]Circular No. A-25, issued September 23, 1959 by the Bureau of the Budget (now Office of Management and Budget), as subsequently amended, sets forth for agency action the scope of user charges activities, guidelines for carrying out the policies prescribed therein and required submission of periodic status reports.

[5]

We propose no changes in the fee schedule relating to Part I of the Federal Power Act since the charges thereby generated substantially cover the cost of administering that part of the Act.[3]

Our order adopting fee schedules applicable to natural gas pipelines recognized that "neither our costs nor the dollar value of facilities will remain static" and that revision "may be necessary in the light of subsequent experience." The growing complexity of certificate proceedings and increases in costs incurred in administering the certificate programs requires a slight upward readjustment of the rates presently applicable if our operation of this activity is to remain self-sustaining. Accordingly, we propose to increase the amounts payable in connection with applications for certificates under Section 7 (c) and (e) of the Natural Gas Act.

The remaining costs of carrying out the functions of our pipeline programs have not heretofore been made subject to any charges. In the main, those functions relate to our activities in passing upon pipeline rate filings. Our proposal to allocate estimated costs among jurisdictional companies on the basis of their relative amounts of natural gas delivered seems fair and equitable since their rates are subject to continued surveillance in addition to the complexity of the issues raised in the augmented number of applications for rate increases which have surfaced in recent years.

[6]

We also propose to adopt a fee schedule which will return to the Treasury the costs of the producer certificate program based upon the annual commitments of new reserves to the pipelines for interstate deliveries. For reasons of administrative convenience these charges would be paid by the pipelines on the basis of new reserves reported as certificated during each reporting period. The pipelines will be able to recoup the amount of such payments

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[3] FY 1970 collections for administering Part I of the Federal Power Act totalled $2,568,106 in contrast with actual costs of operations for that Part of $2,966,977 (exclusive of overhead expense and services to other agencies and the public). However, collections effected under Part I powers vested in the Commission totalled $5,337,703, of which $4,504,299 was paid into the Treasury.

from their customers as part of the costs upon which their rates and charges are based.

The proposed assessments and fees applicable to our functions under Parts II and III of the Federal Power Act are new. Our functions in carrying out the responsibilities imposed under those parts of the Federal Power Act confer benefits upon the recipients. The manner in which allocations should be made has been the subject of much study. We believe our proposals not only spread those costs fairly and equitably but that they are consistent with the legislative and executive mandates we are required to carry out.

The filing fees to be paid upon the filing of designated applications and rate schedules, other than for major rate increases, are in fixed amounts based upon average historic costs incurred in the administration of each of those functions. The sliding scale proposed for major rate increases based upon gross revenues represents, in our judgment, a fair and equitable method of providing for recovery of the average costs involved in the consideration and disposition of those items.

We have also proposed a formula to recoup the remaining costs of our regulatory program and those incurred in the administration of reliability functions by assessments based on revenues as reasonably representative of the value of those services to such companies. We believe our activities in both areas of our operations provide special benefits to the companies subject to our jurisdiction that fully justify the scale of charges we propose to initiate.

[7]

Additional miscellaneous charges have been considered to cover costs incurred in connection with the location of file materials requested for inspection and/or copying. Under existing regulations fees are charged for copying pursuant to contract with a private company which provides that service. Moreover, about 75 percent of our searches for filed materials requires less than one-half hour for which charges would not be administratively feasible. In these circumstances, we believe that only a fee should be charged for certification of documents in the amount of $2.00 to cover the estimated cost thereof.

In developing these schedules we have endeavored to adhere to the guidelines contained in Budget Circular No. A-25 by the imposition of charges "to each identifiable recipient for a measurable unit or amount of Government service . . . from which he derives a special benefit." These services include agency action which "provides special benefits . . . above and beyond those which accrue to the public at large . . ." or provides "more immediate or substantial gains or values . . . than those which accrue to the general public . . ." or provides business stability or assures public confidence in the business activity of the beneficiary. . ." or is "performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public...".

Costs directly allocable to a specific type of service rendered to specifically identifiable persons would be effected by charges directly related to that specific service. In determining the amount thereof we are not required to keep cost records on a case-by-case basis but are authorized to average the costs involved in a particular service. *Aeronautical Radio, Inc. v. United States*, 335 F.2d 304 (CA7, 1964), certiorari denied, 379 U.S. 966 (1965). Our remaining proposed charges being of benefit overall to the members of both industries would be assessed on a measure of size against those within the ambit of our jurisdictional activities.

[8]

The proposed amendments to the Commission's regulations would be issued under the authority granted by the Federal Power Act, particularly Section 309 (49 Stat. 858, 16 USC 825h) and the Natural Gas Act, particularly Section 16 (52 Stat. 830, 15 USC 717o).

A. The following are proposed amendments to Part 3, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations.

(8)

1. Amend the title of Part 3 by inserting the words "Miscellaneous Charges" immediately preceding the words "Ethical Standards". As so amended the title of Part 3 will read:

PART 3—ORGANIZATION; OPERATION; INFORMATION AND REQUESTS; MISCELLANEOUS CHARGES; ETHICAL STANDARDS.

2. Amend "§ 3.102 Public information, requests, and assistance" by revising the section title and by revising paragraph (b) to read as follows:

§ 3.102 Public information, requests, and assistance; miscellaneous charges.

* * * * * *

(b) During the Commission's regular business hours, the public may examine in the Office of Public Information in Washington, D.C., copies of public information filed with the Commission. Photo copies of public material may be obtained through the public reference room. Fees charged for such copies are established by an annual contract between the Commission and a private company which does the work. Current schedules of fees for copying work are available from the Office of Public Information. Except for requests made by government agencies certification of copies of any official Commission record shall be accompanied by a fee of two dollars. Inquiries and orders may be made to that office personally, by telephone, or by mail.

[9]

B. The following are proposed amendments to Subchapter B—Regulations under the Federal Power Act, Chapter I, Title 18 of the Code of Federal Regulations:

1. Revise the title of "Part 11—Annual Charges" to read as follows:

PART 11–ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

2. In "Part 32–Interconnection of Facilities; Emergencies; Transmission to Foreign Country.", revise the section titles and introductory clauses of §§ 32.1, 32.22, 32.51, to read as follows:

§ 32.1 Contents of application; filing fee.

Every application under section 202 (b) of the Act shall be accompanied by the fee described in Part 36 of this Subchapter and shall set forth the following information:

* * * * *

§ 32.22 Application for permanent connection for emergency use; contents; form and style; filing fee; number of copies.

Application for Commission approval of a permanent connection for emergency use only shall be accompanied by the fee described in Part 36 of this Subchapter and shall conform with the requirements of §§ 32.1 to 32.4, inclusive, and, in addition, shall state in full the reasons why such permanent connection for emergency use is necessary in the public interest.

§ 32.51 Contents of application; filing fee.

Every application shall be accompanied by the fee described in Part 36 of this Subchapter and shall set forth in the order indicated, the following:

* * * * *

[10]

3. In "Part 33–Application for Sale, Lease, or Other Disposition, Merger or Consolidation of Facilities, or for Purchase or Acquisition of Securities of a Public Utility", revise the title and introductory sentence of § 33.2 to read as follows:

§ 33.2 Contents of application; filing fee.

Each such applicant shall set forth in its application to the Commission, which shall be accompanied by the fee described in Part 36 of this Subchapter, in the manner and form and in the order indicated, the following information, which should, insofar as possible, be furnished as to said applicant and each company whose facilities or securities are involved:

* * * * *

4. In "Part 34—Application for Authorization of the Issuance of Securities or the Assumption of Liabilities", revise the title and introductory sentence of § 34.2 to read as follows:

§ 34.2 Contents of application; filing fee.

Every such applicant shall set forth in its application to the Commission, which shall be accompanied by the fee described in Part 36 of this Subchapter, in the manner and form and in the order indicated, the following information which, in the case of the assumption of a liability, shall be furnished as to both the issuer and the person assuming liability:

* * * * *

5. In "Part 35—Filing of Rate Schedules", between the heading "Application" and "§ 35.1 Application; obligation to file rate schedules", insert a new "§ 35.0 Filing fees", which will read as follows:

§ 35.0 Filing fees.

Every filing made under this part shall be accompanied by the fee described in Part 36 of this Subchapter.

[11]

6. Immediately following Part 35, add a new "Part 36–Annual Charges and Fees" which will read as follows:

PART 36–ANNUAL CHARGES AND FEES UNDER PARTS II AND III OF THE FEDERAL POWER ACT

§ 36.1 Annual charges.

Reasonable annual charges shall be assessed by the Commission against each public utility to reimburse the United States for such costs of administration of Parts II and III of the Federal Power Act as hereinafter provided:

(a) A determination shall be made for each fiscal year of the costs of administration of the Commission's public utility regulatory and interconnection and coordination programs from which shall be deducted the amounts reserved pursuant to the provisions of paragraph (c) of this section and section 36.2 of this part.

(b) For each calendar year terminating in such fiscal period the costs of administration determined under paragraph (a) of this section shall be assessed against each public utility in the proportion that the gross revenues of such public utility bear to the sum of the gross revenues of all public utilities for the like period.

(c) Annual charges assessed under this section shall be paid within 60 days of the rendition of a bill therefor by the Commission.

[12]

§ 36.2 Filing fees.

A filing fee in the amounts set forth below shall accompany each of the following:

(a) Applications for physical connections $150

(b) Applications for the construction of border facilities $150

(c) Other corporate applications authorized by these regulations under the Federal Power Act, except applications under Part I of the Federal Power Act, applications for authority to hold interlocking positions, and applications for the merger or consolidation of public utilities as provided in paragraph (d) of this section..... $500

(d) Applications for the merger or consolidation of Class A or Class B public utilities or any combination thereof.. $10,000

(e) Nominal rate schedule filings other than that involving rate increases $100

(1) Examples of such filings include schedule changes having minimal impact on the operations of a public utility such as those providing service to an additional delivery point, changes in maximum obligation to serve, changes in minimum billing demand not affecting billings, changes in service rules or regulations not affecting billings, extensions of terms of contracts or continuation of service, cancellation of rate schedules

where service is no longer needed, changes in delivery voltages or metering voltages, changes in contract provisions not affecting service, rates or

billings, and adoption of initial rate schedules containing rates identical to rates applicable to the same customer class previously accepted for filing.

(f) Moderately complex rate schedule filings..... $500

(1) Examples of such filings include schedule changes presenting more complex administrative problems such as those involving interconnection agreements, pooling agreements and additional large-scale sales.

(g) Rate schedule filings involving nominal rate increases..... $500

(1) These include schedule changes involving increases in rates totalling less than $50,000.

(h) Rate schedule filings involving rate increases other than covered under paragraph (g) of this section, as follows:

1 percent of the amount of such increases up to but not exceeding $1 million;

$10,000 plus 1/2 percent of the amount of such increases in excess of $1 million and not exceeding $10 million;

$55,000 plus 1/4 percent of the amount of such increases in excess of $10 million.

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(i) Applications to hold interlocking positions..... $100

§ 36.3 Miscellaneous

Annual assessments and fee payments shall be made by check or money order to the Treasurer of the United States. No fees will be refunded.

§ 36.4 Accounting for fees paid pursuant to this part.

A public utility subject to the provisions of this part shall account for the assessments and fees paid by charging the amounts thereof to Account 928, Regulatory commission expenses.

7. In "Part 45—Application for Authority to Hold Interlocking Positions", revise the title and introductory clause of § 45.8 to read as follows:

§ 45.8 Contents of application; filing fee.

Each application shall be accompanied by the fee described in Part 36 of this Subchapter and shall state the following:

* * * * *

B. The following are proposed amendments to Part 159, Subchapter E—Regulations under the Natural Gas Act, Chapter I, Title 18 of the Code of Federal Regulations:

1. In § 159.2 Applications involving construction or acquisition of facilities, revise paragraphs (a), (b) and (d) to read as follows:

§ 159.2 Applications involving construction or acquisition of facilities.

* * * * *

[15]

(a) Within 30 days following issuance of notice of application, an amount equal to 65/1000 of 1 percent (0.00065) of the estimated cost of construction of new facilities or of facilities to be acquired;

(b) Within 30 days following grant of the certificate, an amount equal to 130/1000 of 1 percent (0.00130) of the estimated cost of construction of new facilities or of facilities to be acquired, unless applicant does not accept the certificate.

* * * * *

(d) If the actual cost of construction of new facilities or of facilities to be acquired exceeds the estimated cost thereof, the statement of actual cost, required to be submitted by § 157.20(c)(4) and (d)(3) of this chapter, shall be accompanied by an amount equal to 195/1000 of 1 percent (0.00195) of the excess of actual cost (plus estimated cost of facilities for which actual cost is not then recorded on the books of applicant) above estimated cost.

* * * * *

2. Immediately following § 159.2, insert a new "§ 159.2a Costs administration" which will read as follows:

§ 159.2a Costs of administration.

Reasonable annual charges will be assessed by the Commission against natural gas companies to reimburse the United States for costs of administration of the Natural Gas Act, as follows:

(a) A determination shall be made for each fiscal year of the costs of administration of the natural gas pipeline programs from which shall be deducted the amounts received pursuant to the provisions of sections 159.1 and 159.2 of this Part.

[16]

(b) For each calendar year terminating in such fiscal period the costs of administration determined under paragraph (a) of this section shall be assessed against

each Class A and Class B natural gas company in the proportion that the total gas deliveries of such natural gas company bear to the sum of the total gas deliveries of all Class A and Class B natural gas companies for the like period.

(c) In addition to the annual charges prescribed by paragraphs (a) and (b) of this section, each natural gas company required to file an Annual Report - Total Gas Supply on FPC Form No. 15 shall be assessed one-tenth (1/10) of a mill for each Mcf of new reserves certificated during the year covered by said report as shown for item 14 of such form.

(d) Annual charges assessed under this section shall be paid within 60 days of the rendition of a bill therefor by the Commission.

3. In "§ 159.3 Miscellaneous", revise paragraph (a) to read as follows:

§ 159.3 Miscellaneous.

(a) *Method of Payment.* Annual assessments and fee payments shall be made by check or money order payable to the Treasurer of the United States. No fees will be refunded.

The Secretary shall cause prompt publication of this notice to be made in the Federal Register.

By direction of the Commission.

Gordon M. Grant,
Secretary.

[34]

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY
DAVENPORT, IOWA

WILLIAM B. WATERMAN
Vice President and General Counsel

December 15, 1970

Gordon M. Grant, Secretary
Federal Power Commission
441 G Street N.W.
Washington, D.C. 20426

Dear Mr. Grant:

Revision of existing	)	
and establishment of	)	Docket R-408
new schedule of fees	)	

Iowa-Illinois Gas and Electric Company herewith submits its comments and suggestions relative to Notice of Proposed Rulemaking issued November 25, 1970, in the above docket. The Company is classified by the Commission as a natural gas company under the Natural Gas Act and a public utility under the Federal Power Act. The name, title and mailing address of the person to whom communications concerning this proposal should be addressed is:

W. B. Waterman, Vice President and
General Counsel
Iowa-Illinois Gas and Electric Company
206 East Second Street
P.O. Box 4350
Davenport, Iowa.

The Company does not request a conference at the Commission to discuss the proposed amendments.

1. With reference to the effective date of this rulemaking as related to fee schedules proposed under Sections 36.2 and 159.2, Iowa-Illinois suggests consideration be given to the prospective

application of fee charges on applications submitted or rate schedules filed after a certain future date. As written, doubt exists whether the

[35]

fee schedules apply to certificate applications already on file but where periodic fees are as yet unpaid or not yet determinable, and, to electric rate schedules filed but not yet made effective.

2. The charges under Section 36.2 appear rather sizable, although Iowa-Illinois has no information upon which to judge the appropriateness of the level of charges proposed or of the sudden disparity between $100 and $500 fees. We suggest further review be made of this fee schedule. There may occur differences of opinion on categorization between "nominal" filings and "moderately complex" filings which may have to be resolved on an *ad hoc* basis. Nominal rate increases for indeterminate purchases or exchanges of energy, for example, may merit far less than a $500 fee even though they may not qualify as an initial rate schedule at $100. Parties may desire to simplify format of an interchange agreement without substantial changes and at the same time raise one element of a charge, which may merit far less than a $500 fee. Further, there is uncertainty whether the filing utility pays the entire fee, or whether the fee specified is to be split among the concurring parties.

3. Applicability of Section 159.2a to a company such as Iowa-Illinois is questioned. The Company urges consideration be given to a provision exempting from proposed Section 159.2a those Class A and Class B natural gas companies making no sales for resale and, therefore, having no rates on file with the Commission, on the following grounds:

a. The Company is engaged in the business of distributing and selling at retail natural gas in various communities in Iowa and Illinois. It makes no sale of natural gas for resale, nor is it engaged in the transportation of gas for purposes other than supplying its own distribution system. The Company has two wholesale

pipeline suppliers upon which its operating districts are solely, and separately, dependent for their supplies of natural gas. No gas is purchased from producers, no producer reserves are committed to the Company, and the Company has no gas rates on file with the Commission.

[36]

(b) Iowa-Illinois, having no committed reserves or producer supply, and being solely dependent upon pipeline purchases near its distribution areas, is not required to file the gas supply Form 15. By reading Section 260.7(b)(2), Part 160 - Statements and Reports, now in effect, we see that proposed Section 159.2a(c) is inapplicable to those not required to file Form 15. By the same reasoning, proposed Section 159.2a in its entirety, and its underlying rationale, appears inapplicable to Iowa-Illinois. At page 5 (last paragraph) and page 6 (first paragraph) of the Notice, the Commission's costs sought to be recovered are principally those of passing upon rate filings and producer certificates. Since Iowa-Illinois makes no sales of gas for resale, and therefore does not have rates on file with the Commission, it ought not be assessed.

(c) Direct assessments against wholesale pipeline suppliers of Iowa-Illinois will be paid by Iowa-Illinois as such suppliers' operating expenses are reflected in their filed rates. Assessment against Iowa-Illinois as well, even though it has no rates on file with the Commission, would result in double charges to the Company (and ultimately to our retail customers) unless such an exemption is provided.

4. In the event no general exemption provision is inserted into proposed Section 159.2a, along the lines above suggested, similar to the exemptions stated in Section 260.7(b) now in

effect, Iowa-Illinois specifically requests exemption therefrom for the reasons stated in paragraph 3 above.

Yours very truly,

/s/ W. B. Waterman

WBW-lc

[37]

SOUTHERN CALIFORNIA EDISON COMPANY
P.O. Box 351
Los Angeles, California 90053

ROLLIN E. WOODBURY
Vice President and General Counsel

December 15, 1970

Federal Power Commission
441 G Street, N.W.
Washington, D.C. 20426

Attention: Mr. Gordon M. Grant
Secretary

Gentlemen:

Re: Docket No. R-408

Pursuant to the notice of proposed rulemaking issued by the Commission November 25, 1970, in Docket No. R-408, inviting the submission of comments with respect to the proposed revision of existing and establishment of new schedules of fees, the Southern California Edison Company respectfully submits herewith its comments.

At the outset, we wish respectfully to direct the Commission's attention to certain respects in which the notice fails to indicate, with clarity and certainty, the position of the Commission with respect to the proposed revisions and its bases, and thus is ambiguous.

1. It is unclear as to whether it is the position of the Commission that "compliance with the spirit of the 1952 Appropriation Act, Executive directives and subsequent Committee recommendations" requires, in its view, special benefits above and beyond those which accrue to the public at large, as a basis for the imposition of charges, or whether it is the position of the Commission that all costs incurred by it, in carrying out its administrative

responsibilities, can be so allocated to the utilities irrespective of any special benefits to the utilities proposed to be taxed with such cost.

a. It is recognized that reference is made in the notice to Budget Circular A-25 setting forth guidelines for the imposition of charges

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" 'to each identifiable recipient for a measurable unit or amount of Government service . . . from which he derives a special benefit'," and then the Commission goes on to state that "These services include agency action which 'provides special benefits . . . above and beyond those which accrue to the public at large' or provides 'more immediate or substantial gains or values . . . than those which accrue to the general public' " (suggesting a recognition of the need for special benefits as a basis for imposing a charge).

b. However, the Commission also states that "The proposed assessments and fees applicable to our functions under Parts II and III of the Federal Power Act are new. Our functions in carrying out the responsibilities imposed under those parts of the Federal Power Act confer benefits upon the recipients." It then proposes a formula allocating all remaining administrative and regulative costs thereunder to the utilities on the basis of gross revenues. If the statement that Parts II and III of the Federal Power Act confer benefits upon the recipients is intended to exclude the general public, it would seem to run counter to the legislative history and the declaration of policy contained in the Act. If, on the other hand, it is intended to include the general public, then there would appear to be an absence of the special benefits contemplated by the governmental directives relied upon.

2. It is unclear from the notice as to whether or not it is the position of the Commission that *all* of its functions under Parts II and III of the Federal Power Act confer special benefits overall to the members of the electric industry above and beyond those which accrue to the public at large.

3. The notice indicates that the Commission has "thoroughly reviewed the existing fee structure and the areas of our administrative operations which have not heretofore been subject to any charges" and that the manner in which allocations should be made with respect to the Commission's functions under Parts II and III of the Federal Power Act

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"has been the subject of much study". The notice then states that the Commission believes "our proposals not only spread those costs fairly and equitably but that they are consistent with the legislative and executive mandates we are required to carry out". However, there is nothing in the notice to indicate what was in the Commission's study to motivate such belief or to support such conclusion. The affected parties, we submit, should be advised of these critical factors, for obviously they need to know the bases of such conclusion in order to evaluate their fairness and propriety. In the absence of such information, we can only express serious doubts that there is any correlation or functional connection between the gross revenues of the public utilities involved and the asserted special benefits. The bases for such doubts include the following:

a. No distinction is drawn in the rule proposed between the gross revenues from resale service, over which the Commission has jurisdiction under Part II of the Federal Power Act, and the gross revenues which are derived from rates over which the FPC has no jurisdiction. In the case of our company, the revenues from rates subject to FPC jurisdiction in 1969 represented only approximately 4.3% of our company's gross revenues, the balance being derived from rates over which the Federal Power Commission has no jurisdiction.

b. No distinction is drawn between utilities whose security issues require Federal Power Commission authorization under Part II of the Act and those who do not.

c. There is no indication in the notice of any correlation between the gross revenues of utilities and the time of the Commission involved in administering Parts II and III of the Federal Power Act, nor of any basis for concluding that gross revenues would be a reasonably appropriate, rather than an arbitrary, basis for allocating such charges.

d. The proposal would have an effect similar to adding an additional tax at the federal level on the investor owned utilities based upon revenues,

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having no demonstrable relationship to the services alleged to be rendered. Furthermore, such a general cost-reimbursable proposal could conceivably tend to erode both the efficiency factor in the carrying on of the functions of the Commission and the budgetary controls of the Congress over such operations.

In addition, it is noted that the proposal suggests increasing filing fees which are to be paid before any Commission service is rendered.

Under these circumstances, we believe the proposed revisions of the Commission's fees are inappropriate, and respectfully request a conference at the Federal Power Commission to discuss the proposed amendments. In this connection, it is suggested that if the interested parties could be furnished with a copy of the study referred to in the notice, upon which the Commission bases its belief that its proposals spread the costs fairly and equitably and consistent with the legislative and executive mandates, a reasonable time before the conference, it could serve to supply the parties with an opportunity to review and evaluate the information that they need to know before the conference and thus could expedite the conference.

The name, title and mailing address of the person to whom communications concerning the proposal should be sent is as follows:

Rollin E. Woodbury
Vice President and General Counsel
Southern California Edison Company
Post Office Box 351
Los Angeles, California 90053

Respectfully submitted,

SOUTHERN CALIFORNIA
EDISON COMPANY

By /s/ Rollin E. Woodbury
Vice President and General Counsel

(53)

[53]

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and Natural Gas Companies and for Miscellaneous Services Rendered by the Federal Power Commission.	)	Docket No. R-408

COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY

PACIFIC GAS AND ELECTRIC COMPANY submits these comments in response to the Commission's November 25, 1970 Notice of Proposed Rulemaking in the above-entitled proceeding. All communications in regard to this matter should be addressed to the following persons:

F.T. Searls, Vice President and General Counsel
Malcolm H. Furbush, Assistant General Counsel
Daniel E. Gibson, Attorney
245 Market Street
San Francisco, California 94106

I

The rules proposed here in new Part 36 would attempt to recoup the costs of administering Parts II and III of the Federal Power Act through a scheme of arbitrary fees and assessments. We respectfully submit that this proposed scheme must be revised

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if it is to reflect truly the principle that administrative costs should be borne by those obtaining a special benefit from the expenditure.

II

Under proposed Section 36.2 a schedule of filing fees is prescribed for applications and rate schedule filings under Part II of the Act. The balance of the costs of administering Parts II and III which are not recouped through these filing fees would be recovered by means of the "assessment" provided for in proposed Section 36.1. It is evident that under this scheme a public utility could be assessed for a part of the costs of handling the filings of others even though it has made no rate filings or applications itself, unless some sort of yearly readjustment of filing fees were made so that these fees more nearly approximate the costs of the proceedings out of which they arise.

The balance of Part II and III costs not recouped by the filing fees just discussed would, under the proposed rules, be assessed against each jurisdictional public utility in the same proportion as the individual utility's gross revenues bears to the total of all utilities' revenues. The choice of gross revenues as a basis of this assessment is inappropriate. The costs of administration of Parts II and III of the Act would appear to

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be related more to the number of jurisdictional companies involved than to the gross revenues of each. Administrative costs are probably incurred on a company basis. For instance, the costs of reviewing and compiling statistics from annual report forms is not likely to vary with the size or gross revenues of the reporting company.

If revenues were to be given any consideration in assessing administrative costs, the appropriate revenues to consider would be those from sales subject to the FPC's jurisdiction, rather than the total gross revenues of the public utility. Total gross revenues have no necessary relationship with either the costs of FPC regulation or the benefits received therefrom. FPC jurisdictional revenues, on the other hand, do represent a composite of the quantity and price of the utility's interstate transactions. Thus, it would seem more equitable for this FPC assessment to

be based on such jurisdictional revenues instead of being dependent in large part on the magnitude of local activities which are subject to State, rather than Federal, regulation.

III

It is evident that to apportion costs in accordance with gross revenues of public utilities subject to the Act would not reach a substantial number of those who benefit from the Commission's regulation. Some portions of the Commission's activities may be

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considered to benefit the public in a more general sense. For instance, FPC regulation is frequently invoked on behalf of publicly-owned power systems. Under these circumstances it would appear that Budget Circular A-25 would call for recovering the related cost from taxpayers as a normal cost of government. To the extent that the general public is deemed to benefit, we would suggest that the Commission should exclude a portion of its costs from those to be recovered from public utilities. Certainly the gross revenue allocation approach would only compound the inequity which would otherwise result because it leaves out some of the major beneficiaries of Commission regulation.

Respectfully submitted,

/s/ F.T. Searls

F. T. SEARLS
Vice President and General Counsel
Pacific Gas and Electric Company
245 Market Street
San Francisco, California 94106

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and Natural Gas Companies and for Miscellaneous Services Rendered by the Federal Power Commission	:	Docket No. R-408

COMMENTS BY PUBLIC SERVICE ELECTRIC AND GAS COMPANY ON PROPOSED RULEMAKING

Public Service Electric and Gas Company submits these comments in response to Notice of Proposed Rulemaking issued November 25, 1970, by the Federal Power Commission concerning New Schedules of Fees and Annual Charges to be Paid by Electric Public Utility Companies and Natural Gas Companies.

The proposal that an annual assessment be imposed to recover administration costs in the opinion of the Company does not appear to have been contemplated by Congress. The

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pertinent provisions of the Independent Offices Appropriations Act for the year ended June 30, 1952 as set forth on page 2 of the proposed rulemaking docket do not refer to administration costs as such. Rather it seems to be the sense of the Congress to authorize the Federal agency concerned to prescribe fees or charges with respect to services or benefits which are performed by the agency with respect to the company served or benefitted. Thus the costs we believe Congress intended to be recovered are those

costs which are identifiable with a value to the recipient or interest served as referred to in the Act which is set forth on page three of the Notice. In addition, the proposed method for determining the annual assessments is not equitable, because for certain utilities, revenues and gas deliveries are predominantly intrastate and these utilities are required to pay significant amounts of administration costs to state commissions. A more equitable method would be to base the apportionment on the proportion the utility's interstate revenues bear to total interstate revenues. In the case of natural gas companies, interstate

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deliveries should be used. It should be noted that the impossibility of developing a completely equitable formula for determining annual assessments, based on the value of the service, to recover administration costs supports the contention of the Company that Congress did not intend that administration costs should be completely recovered. The benefits and services which are derived from administrative agencies inure to members of the general public as well as to customers of the companies regulated and, therefore, it is proper that a portion of the costs should be recovered from tax monies.

For example, Public Service would be assessed an inequitably large portion of the Federal Power Commission administration costs if they are, as proposed, based upon gross revenues since Public Service's retail operations are entirely within the State of New Jersey and thus would require much less administrative effort on the part of the F.P.C. than would be required for an interstate operating and/or holding company. A more equitable assessment would

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allocate costs on the basis of services actually rendered by the F.P.C.

The Notice suggests the possibility of a conference at the Federal Power Commission to discuss the proposed amendments.

In the event such a conference is held the Company requests that it be permitted to participate.

Respectfully submitted,

/s/ Edward S. Kirby

Edward S. Kirby
Attorney for Public Service
Electric and Gas Company
80 Park Place
Newark, New Jersey 07101

Dated: Newark, New Jersey
January 15, 1971

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[82]

NEW ENGLAND POWER SERVICE COMPANY

20 Turnpike Road, Westboro, Mass. 01581

January 19, 1971

Federal Power Commission
Washington
D. C. 20426

Re: Docket No. R-408
(Revision of Existing and Establishment of New Schedules of Fees, etc.)

Dear Sirs:

The following comments are submitted on behalf of the electric subsidiaries of New England Electric System, namely, Granite State Electric Company, Massachusetts Electric Company, The Narragansett Electric Company and New England Power Company. Though the undersigned on behalf of said companies does not request a conference on these comments, if it be the wish of the Commission or its staff, we would be willing to confer. However, if there is to be a general conference or hearing on the proposed schedules of fees, set forth in the above docket, we request to be notified and given the opportunity to participate. Communications should be sent to the undersigned at the address on the letterhead above.

As set forth in the Notice of Proposed Rulemaking, dated November 25, 1970, the statutory basis for the proposal is set forth in 31 USC 483a, 65 Stat. 290 (1951). Though this statute has been construed by the Commission to permit the establishment of fees with respect to specific applications to the Federal Power Commission (see FPC Order No. 317, Docket R-282, 31 F.R. 430, 35 FPC 30, 1966, order adopting a schedule of fees for specific applications by natural gas companies under the Natural Gas Act), it is submitted that such does not authorize the assessment of annual charges for general administration by the

Commission of Parts II and III of the Federal Power Act. In fact, the Commission itself in 1965 so indicated when it was proposing the abovementioned fee schedule for natural gas companies. According to Release No. 14025 dated September 15, 1965, 30 F.R. 12077, the Commission said that it had "reviewed its other functions under the Federal Power Act and Natural Gas Act and is of the opinion that the assessment of user charges or other fees with respect to the exercise of our regulatory activities under Parts II and III of the Federal Power Act and under the generally parallel rate and accounting provisions of the Natural Gas Act would not be appropriate since these activities are primarily for the benefit of the general public rather than the regulated companies." (In said release the Commission had noted it already imposed fees in connection with licenses for hydroelectric power projects.)

Assuming arguendo that there is a statutory base for the proposed fees and annual charges, we respectfully submit the following comments:

1. The flat provision in proposed Section 36.3 that "no fees will be refunded" utterly fails to meet the fair and equitable standard in 31 USC 483a. For example, it is not uncommon for rate schedules upon or shortly after filing to be rejected or withdrawn on grounds that the application is not complete or that the filing is not timely or appropriate, e.g., a rate schedule filed during a period of suspension of a previous filing. In the event of a major rate case, a fee of upwards of $55,000 would be lost to the filing utility and the cost of administration for a quick review to determine the completeness or acceptability of the application would not have exceeded some small, minimal amount. Other regulatory agencies do provide a refund of fees in the event of rejected or withdrawn filings. See, for example, the Fee Schedule adopted by the CAB as set forth in 14 CFR, Section 389.20 et. seq., especially Section

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389.25(a)(1); the FCC Fee Schedule at 47 CFR, Section 1.1101 et. seq., especially Sections 1.1104 and 1.1105; and the ICC Fee Schedule at 49 CFR, Section 1002, especially Section 1002.2(b).

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It is suggested that the Commission refund filing fees for applications which are rejected for filing by the Commission as incomplete or for any other reason. See the ICC Fee Schedule at 49 CFR, Section 1002.2(b). If the Commission determines that it is necessary to retain some minimum filing fee even for rejected applications to defray the cost of routine processing then it is suggested that the Commission adopt a two tier fee system similar to that used by the CAB at 14 CFR, Section 389.25 (a)(1) and (a)(2), a relatively low nonrefundable initial filing fee for an application followed by a later higher license fee to be paid only if a license or permit is granted.

2. A flat fee for a specific application, whether or not the application would involve a public hearing and protracted proceedings, fails to meet the fair and equitable standard in 31 USC 483a. This is particularly true with respect to rate filings applying only to sales of electric energy between affiliated companies. In such cases there generally is substantially less likelihood of protracted public proceedings.

3. The provision of proposed Section 36.1 for the assessment of public utilities for the costs of administration of the regulatory and interconnection and coordination programs under Parts II and III of the Federal Power Act fails to meet the fair and equitable standard on several bases, including:

   (a) The automatic assessment of all such costs would place the burden of bearing such costs on the public utilities irrespective of the reasonableness

of the Commission's administrative programs or the extent thereof. It is a blank check for the Commission, with Congressional authorization, to undertake whatever program it desires at the expense of the utilities without any opportunity for utilities, other than appearing annually at Congressional appropriation

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hearings, to test the specific application of the statutory factors set forth in 31 USC 483a for determination of what is fair and equitable. As a minimum, some aggregate dollar amount to be paid by the utilities should be established by the Commission, after opportunity for such utilities to question said amount. Once this aggregate amount is fixed, it should not be revised without further opportunity for hearings.

(b) By assessing public utilities for all costs other than those covered by specific fees, utilities in general would bear the costs of complex, litigated cases for which the established fees are inadequate to cover average full costs. Admittedly, the setting of a standard fee for the average case is appropriate rather than to assess costs for each such case. But, unless there be specific fees for the complex, litigated cases, an undue burden is assessed through the annual charges on all utilities.

(c) The method of allocation of the annual charges among the respective public utilities, as set forth in proposed Section 36.1(b), is not fair and equitable. By basing the allocation on the respective gross revenues of the public utilities, some of the consequences would be:

(i) A fully integrated public utility operating within one state would have only a small percentage of its gross revenues derived from jurisdictional sales under the Federal Power Act. Its primary regulation would be by a State commission with respect to its non-FPC jurisdictional business. On its business subject to regulation by the State in which it is

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located it should not have to bear the FPC costs of administration of Parts II and III of the Federal Power Act on the same basis as a company such as New England Power Company whose sales, with small exceptions, are all jurisdictional under the Federal Power Act.

(ii) However, if the assessment of the annual charges is amended to conform to a suggestion just made in (i) above, some further adjustment will be necessary to avoid an unfairness with respect to a largely jurisdictional company such as New England Power Company. Some 90% of New England Power Company's sales are made to affiliated companies in the same holding company system. These sales should be excluded from its gross revenues in determining what portion of annual charges should be assessed on New England Power Company. Otherwise it would be bearing a disappropriate amount of the general charges of the Commission as compared to other utilities around the country. The area wherein New England Power Company might be charged more than a fully integrated utility operating

within one State would be in connection with the specific applications and fees that New England Power Company would be filing and paying with respect to specific jurisdictional matters.

4. The proposals for fees relating to rate schedules are deficient with respect to the following:

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(a) No basis is set forth for the computation of the amount of increase involved in the rate filing. Is it to be a computation based on some past 12-month period, some future 12-month period, some future 12-month period, or some other period.

(b) The subdivision of rate filings as set forth in proposed paragraphs (e), (f) and (g) of proposed Section 36.2 will result in confusion and administrative problems in determining which category is applicable. It is suggested that all three be combined into one with a set fee of, say, $300. If the three categories are not combined, serious consideration should be given to the adoption of an internal FPC appeal and review procedure over the staff's fee determination in disputed cases, similar to the system employed by the CAB as set forth in 14 CFR, Section 389.23.

5. It should be made clear that the fees for specific applications are to be assessed only with respect to the original application and that amendments would not require the payment of any additional fee unless the scope of the subject of the application be substantially altered.

6. Without any provision for varying the amounts of fees dependent upon the relative importance of the particular applications, the fee schedule is not fair and equitable. For example, what is fair and equitable in assessing a

$10,000 fee for an application to merge utilities irrespective of their size? Why, for example, should two Class B utilities be required to pay upon application for merger the same fee as two utilities with revenues of $1 or $2 million or more?

Another example is the $500 fee for all corporate applications other than those for which fees are set forth. Normally the catch-all fee is the smallest of a list of set fees for specific applications. Presumably, all major applications would have fees

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established for them. For example, it is difficult to see why an application under Section 203(a) for a simple, uncontested transfer of a jurisdictional facility with a value of only $80,000 from one public utility to another at its net original cost and involving no dispute between the parties nor the Commission's staff should carry a fee of $500 when an application of a compulsory physical interconnection under Section 202(b) would presumably involve controversy and yet calls for a fee of only $150.

It is respectfully submitted that the above comments in themselves indicate that the adoption of the proposed schedules of fees set forth in the Notice of Proposed Rulemaking issued November 25, 1970 would be unfair, inequitable and illegal.

Very truly yours,

/s/ Richard B. Dunn

Richard B. Dunn
Vice President and General Counsel

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and Natural Gas Companies and for Miscellaneous Services Rendered by the Federal Power Commission	))))))	Docket No. R-408

COMMENTS OF LOUISIANA POWER & LIGHT COMPANY

Louisiana Power & Light Company (LP&L) respectfully submits the following comments in response to the Notice of Proposed Rulemaking of the Commission in this proceeding issued November 25, 1970. The person to whom communications concerning the proposal should be addressed is:

J.M. Wyatt, Senior Vice President
Louisiana Power & Light Company
142 Delaronde Street
New Orleans, La. 70114

In the Notice the Commission stated that it proposed to add to the charges which is has been collecting for many years under Part I of the Federal Power Act a number of additional charges for administering Parts II and III of the Act. As a basis for these additional charges the Notice cited Title V of the Independent Offices Appropriations Act for 1952. The reliance upon that Act was necessary because Section 10 (c)

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of Part I of the Power Act specifically provides for the payment of annual fees for administering that Part, while neither Parts II nor III contain such provisions.

(92)

It is respectfully submitted that this reliance on the Independent Offices Appropriations Act is misplaced. This Act contemplates charges for specific items of work, publication or document, or where a service performed by a government agency confers a special benefit only on the recepient and not to the public as a whole.

It is these specific items which "shall be self-sustaining to the full extent possible", not the entire operation of major activities of an agency. We therefore respectfully submit that that portion of the proposed amendment which provides for adding, in Part 36.1, a recovery of the total cost "of administration of the Commission's public utility regulatory and interconnection and coordination programs" under Parts II and III exceeds the intent of the quoted provision of the Independent Offices Appropriations Act. Whatever additional fees and charges are to be levied should be limited to specific charges for specific services or documents, not extended to a general recovery of costs of administration on an unrestricted basis.

The primary purposes of Parts II and III are general in nature and not for the special benefit of any person including the utility which is regulated. This was recognized by the Commission in its Notice of Proposed Rulemaking issued September 15, 1965 in Docket No. R-282, a proceeding which culminated in the establishment of fees for certain applications under the Natural Gas Act. The Commission

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stated at page 2 of that notice that it had considered the questions of fees for administering Parts II and III of the Federal Power Act as well as the Natural Gas Act:

> "The Commission has reviewed its function under the Federal Power Act and the Natural Gas Act and is of the opinion that the assessment for user charges or other fees with respect to the exercise of our regulatory activities under Parts II and III of the Federal Power Act and under the generally parallel

rate and accounting provisions of the Natural Gas Act would not be appropriate *since these activities are primarily for the benefit of the general public rather than the regulated companies.*" (Emphasis supplied)

It is submitted that nothing has happened since 1965 to change this eminently sound conclusion. It is further noted that identical benefits of the Commission's activities accrue to entities transmitting and selling electric energy against whom no such annual fee would be assessed, such as publicly-owned power systems. A double discrimination exists in the proposed apportionment of costs that includes benefits rendered to such entities but fails to recover any amount from them.

The Notice proposes a two step procedure. Specific charges are made for individual applications; and "to recoup the remaining costs" of the regulatory program, an amount will be levied on an annual basis on the "gross revenues" of each company subject to the Commission's jurisdiction. This latter assessment is improper for several additional reasons.

First it is a clear violation of the Congressional admonition that only special benefits should be charged to a regulated company. Because the annual charge would be based upon gross revenues

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it would bear absolutely no relationship to any service performed by the Commission. In substance, it is the equivalent of a gross receipts tax collected by, and for the benefit of the Commission. The law confers no such power on the Commission, entirely aside from the question of the unsoundness of an administrative body having an unlimited right to make levies to recoup whatever its budget deficit may be.

Finally the use of total-system gross revenues in calculating the annual assessments is wholly inappropriate. If for any reason revenues could be taken into account in assessing administrative

costs, the only logical method would be to consider only those revenues derived from sales subject to FPC regulatory jurisdiction.

"Gross revenues," as used in proposed Section 36.1 (b) is not defined, and might be construed to include retail operating revenues which are not subject to a regulatory jurisdiction of the Commission, forfeited discounts, rent from electric property, and other miscellaneous service revenues, as well as other non-jurisdictional revenues. For the year 1969, the total electric operating revenues of LP&L were $136,490,775, while its bulk power supply sales from associated and non-associated utilities amounted to $20,548,841 or 15.1 per cent of the total, and its sales for resale to municipalities and cooperatives amounted to $3,826,604 or 2.8 per cent of the total. The sales for resale that are subject to Commission regulatory jurisdiction then amounted to only 17.9 per cent of the total electric operating revenues of the Company.

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Accordingly, if the Commission is lawfully able to assess any such annual charge, LP&L should be assessed only on the basis of the revenues referred to in the schedule of "Electric Operating Revenues" in account 447, "Sales for Resale," of FPC Form 1. It is submitted that the term "gross revenues" in Section 36.1 (b) be defined as "revenues subject to the regulatory jurisdiction of the Commission on an annual basis as reported to the Commission."

For the foregoing reasons it is submitted that the proposed assessment of fees relating to the Commission's functions under Parts II and III of the Federal Act is without foundation in law, and wholly at variance with all principles for the orderly administration of government.

If a conference on this proceeding is held, it is requested that the undersigned be given notice thereof.

Respectfully submitted,
Louisiana Power & Light Company

By:
/s/ J.M. Wyatt
Senior Vice President

DRAFT
EMN:mal
1/18/71

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and Natural Gas Companies and for Miscellaneous Services Rendered by the Federal Power Commission	)	Docket No. R-408

COMMENTS OF THE
EDISON ELECTRIC INSTITUTE

The Edison Electric Institute (Institute), the trade organization of the investor-owned electric public utility industry, submits these comments in response to the Notice of Proposed Rulemaking which was issued by the Federal Power Commission (Commission) as Docket No. R-408 on November 25, 1970.

The comments are responsive to the proposals set forth in the Notice to amend Part 3 of the Commission's General Rules and to amend Part 32, Part 33, Part 34, Part 35 and Part 45 of, and add a new Part 36 to, the Commission's Regulations under the Federal Power Act.

The Institute agrees that it would be appropriate for the Commission to collect a fair and equitable fee from a utility it regulates when it provides a service to or for that utility. However, the Institute does not believe that it is lawful or appropriate for the Commission to allocate among all of the utilities it regulates all other costs of administration of Part II and Part III of the Federal Power Act (Act) as is contemplated in proposed Section 36.1.

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Title V of the Independent Offices Appropriations Act for the Year Ending June 30, 1952 (65 Stat. 290, 31 USC 483 (a)) authorizes federal agencies to prescribe fees, charges and prices to be collected for the performance by them of certain specified activities. It further requires that those fees, charges and prices be "fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts . . ." Since the annual charge which would be prescribed by proposed Section 36.1 is not related to specified activities and is not fair and equitable, it is not a charge authorized by Title V.

Title V requires that for a charge to be fair and equitable it must be reasonably related, inter alia, to the interest served. Many of the Commission's regulatory activities under Part II and Part III of the Act are primarily for the benefit of the general public rather than the utilities it regulates.

The Commission's activities in these regards benefit the general public, including all segments of the electric utility industry, investor-owned, government-owned and cooperatively owned, those the Commission regulates and those it does not. It seems apparent, therefore, that these activities should be paid for primarily from tax revenues appropriated by Congress and spent by the Commission under Congressional control.

Without compromising in any way its position in opposition to the proposed annual charge, the Institute also wishes to point out some ambiguities and inequities in proposed Section 36.1. The effective date of the

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assessment of the initial annual charges is unclear. The use of gross revenues of public utilities as the basis for allocation seems unjustified and unjustifiable. There obviously are activities omitted from proposed Section 36.2, such as intervention, for which the Commission could and should prescribe fees.

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This raises a broader question in connection with proposed Section 36.2. For what activities should the Commission prescribe specific fees? The Institute also questions the level of fees. Access to the "historic costs" mentioned in the Proposed Rulemaking might be helpful. Finally, the Institute questions the appropriate uses of the sliding scale proposed for major rate increases.

The Institute therefore respectfully requests a conference at the Commission to discuss the Proposed Rulemaking. Some of the principal issues which could be discussed at such a conference appear to be as follows:

1. Which of the Commission's activities under Part II and Part III of the Act are primarily for the benefit of the regulated utilities and which are primarily for the benefit of the general public?

2. Does proposed Section 36.2 include all of the activities of the Commission under Part II and Part III of the Act which are primarily for the benefit of the regulated utilities and exclude all that are primarily for the benefit of the general public?

3. Is there any way, under the Act and Title V, to prescribe fees to cover all or any part of the cost of Commission activities under Part II and Part III of the Act which are not primarily for the benefit of the regulated utilities?

4. Are the fees set forth in proposed Section 36.2 reasonably related to the costs to the Commission of performing the activities to which they relate?

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The name, title and mailing address of the person to whom communications concerning this Proposed Rulemaking should be addressed is

Mr. W. Donham Crawford
President
Edison Electric Institute
750 Third Avenue
New York, New York 10017

Respectfully submitted,
Edison Electric Institute

By:
/s/ W. Donham Crawford
President

January 21, 1971

(111)

COLUMBIA GAS SYSTEM SERVICE CORPORATION

Richard A. Rosan
Senior Vice President
and Counsel

20 Montchanin Road
Wilmington, Del. 19807

January 20, 1971

Federal Power Commission
441 G Street, N.W.
Washington, D.C. 20426

Re: Docket No. R-408: Revision of Existing and Establishment of New Schedules of Fees

Gentlemen:

Columbia Companies* hereby respond to the Commission's Notice of Rulemaking, dated November 25, 1970, in the above-entitled matter and have the following comments:

Columbia Companies submit that the thrust of the proposed rulemaking herein is to change substantially the concept of user charges from (a) a procedure whereby the identifiable recipients of services are charged for the costs of services to (b) a procedure whereby the industry at large, whether specifically benefited or not, must underwrite the total costs of administering the Natural Gas Act. We are unable to find authorization for such change.

The Commission's Notice cites the enabling legislation, namely Title 5 of the Independent Offices Appropriation Act (31 USCA 483a). It should be noted, however, that this enabling legislation is expressly "subject to such policies as the President may prescribe". (Id.) The pertinent policies which the President has prescribed are contained in Circular No. A-25 issued by the Bureau

*The Ohio Fuel Gas Company, United Fuel Gas Company, Kentucky Gas Transmission Corporation, Columbia Gulf Transmission Company, Atlantic Seaboard Corporation, The Manufacturers Light and Heat Company, Cumberland and Allegheny Gas Company and Home Gas Company

of the Budget in the name of the President on September 23, 1959. There it

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is stated as a matter of "general policy" that "a reasonable charge . . . should be made to each identifiable recipient for a measured unit or amount of government service from which he derives a special benefit". This Circular clearly recognizes that part of the administration of the Natural Gas Act is not directly related to the natural gas industry; and, thus, should not be assessed against the natural gas industry. This recognition is expressed in the Circular as follows:

> "No charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefiting broadly the general public . . ." (Id., mimeo page 2, paragraph 3(a)(2))

Thus, since the bulk of administrative costs are not so identifiable, they should be recovered from the public generally, as part of the cost of government, and not from the natural gas industry.

Moreover, the concept of administrative convenience of assessing pipelines for the alleged "benefits" accruing to producers through the certification of gas contracts illustrate dramatically how far the Commission has deviated from the express terms and concepts of the Circular.

Therefore, we respectfully submit that proposed paragraph 159.2a(b) is improper, and should not be effected as a rule. For similar reasons and because natural gas companies are not "the parties benefited", we submit that proposed paragraph 159.2a(c) should also not be promulgated as a rule of this Commission.

* * *

Assuming, *arguendo,* the Commission has the authority to recover *all* its costs of administering the Natural Gas Act as proposed in this docket, we submit that the charges against

natural gas companies should be calculated so the entire costs of administering the Natural

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Gas Act should be allocated pursuant to a single formula. If the Commission's administrative costs are to be borne by natural gas companies and are to be recovered in rates on a current basis, they should not be subject to extreme variations. Charges based upon certifications will continue to fluctuate widely because construction varies from year-to-year. Charges based upon attachments of natural gas reserves will fluctuate more widely because reserves are not added in predictably even quantities. For instance, United Fuel added over six trillion cubic feet of reserves in one year (on which the fee would be $600,000) and in some years has added only a half trillion cubic feet of reserves (on which the fee would be $50,000). Such extreme variations would inevitably make it impossible for United Fuel to recover these fees in rates.

It would seem that the appropriate method of assessing general costs to all Class A and Class B natural gas companies is the net asset value of jurisdictional properties. This is a readily determinable figure subject to neither the fluctuations nor the ambiguities inherent in the term "deliveries". Also, net asset value of jurisdictional properties criteria, would eliminate any imbalance of fee burden on the ultimate consumer which would be occasioned merely by the number of pipeline companies between the source of gas and the burner tip. Moreover, since general regulatory problems are important only as they govern cost determinations, it seems on balance, that a fairer measure for allocating regulatory costs is by net jurisdictional assets.

Therefore, we respectfully submit, in the alternative and on the jurisdictional assumption noted herein-before, that Paragraph B of the proposed rulemaking Notice setting forth proposed amendments to Part 159, Subchapter E–Regulations Under the Natural Gas Act, Chapter I, Title 18 of the Code of Federal Regulations be deleted and that in lieu thereof the Commission

provide that reasonable annual charges will be assessed by the Commission against Class A and Class B natural gas companies to reimburse the United States for costs of administration of the Natural Gas Act, such assessment to be in the proportion of their net jurisdictional assets.

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We respectfully request that if a conference is held in this proceeding, Columbia Companies be afforded the opportunity to participate therein. The name and mailing address of the persons to whom communications should be sent regarding this proceeding are:

Richard A. Rosan, Esquire
20 Montchanin Road
Wilmington, Delaware 19807

Daniel L. Bell, Jr., Esquire
20 Montchanin Road
Wilmington, Delaware 19807

William C. Hart, Esquire
1625 Eye Street, N.W.
Washington, D.C. 20006

Respectfully submitted,
Columbia Gas System Companies

By:
/s/ Richard A. Rosan

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AMERICAN ELECTRIC POWER SERVICE CORPORATION
HERBERT B. COHN
Executive Vice President
Administration and Corporate Services
2 Broadway, New York, N.Y. 10004
(212) 422-4800

January 20, 1971

Federal Power Commission
Washington, D.C. 20416

Attention: Hon. Gordon M. Grant, Secretary
Gentlemen:

Re: Docket No. R-408

The following comments are filed by American Electric Power Service Corporation on behalf of Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Company, Kingsport Power Company, Michigan Power Company, Ohio Power Company and Wheeling Electric Company, pursuant to the Notice of Proposed Rulemaking in the subject docket promulgated by the Commission on November 25, 1970.

The undersigned agree that, within appropriate limits, it is not unreasonable that Federal regulatory agencies establish and collect fees from parties seeking relief or authorization from the Commission in such amounts as will produce revenue generally equivalent to the cost incurred by the Commission and its staff in processing such applications. The undersigned believe, however, that, for the reasons described in the following comments, certain of the proposed fees and charges do not accomplish the Commission's purpose of establishing a "fair and equitable" method of recovering costs of the Commission.

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COMMENTS

I. *Section 36.1 – Annual Charges*

Section 36.1 provides for annual charges to be assessed

against "each public utility" presumably to cover costs of those instances of the Commission's exercise of its jurisdiction which are not covered by any one of the charges established in Section 36.2, such as the Commission's regulatory, interconnection and coordination programs. Section 36.1 provides that the amount assessed against each public utility to cover such cost shall be based on a ratio of the gross revenues of each such public utility to the sum gross revenues of all public utilities for the test period. We do not believe this is fair and equitable.

A. *Total Cost of Commission's Activities Should Not be Recovered from Utilities and Their Customers:* Some of the varied functions carried out by the Federal Power Commission, including the providing of information to the public, as well as some of the Commission's ever-expanding functions in the ecological field, are of such a nature that the cost thereof should be borne by all of the taxpayers, rather than by utilities and their customers. As a result, it is submitted that it would be unreasonable to require the electric utility industry to be assessed for all costs incurred by the Commission which are not covered by specific charges assessed in connection with specific types of applications.

B. *Limitation of Annual Charges to "Public Utilities":* The undersigned believe that to limit the assessment of charges under Section 36.1 to "public utilities" is unreasonable. The guidelines contained in Budget Circular No. A-25, relied upon by

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the Commission in its proposed rulemaking, indicate that charges should be imposed "to each identifiable recipient for a measurable unit or amount of Government service . . . from which he derives a specific benefit" such as ". . . special benefits . . . above and beyond those which accrue to the public at large . . ." or "more immediate or substantial gains or values . . . than those which accrue to the general public . . ." or where such service is "performed at the request of the recipient and

is above and beyond the services regularly received by other members of the same industry or group, or of the general public . . ."

Yet, limiting the assessment of annual charges against "public utilities," which is defined in Section 201(e) of the Federal Power Act as "any person who owns or operates facilities subject to the jurisdiction of the Commission under this part," would appear to eliminate the assessment of any charges against others who initiate proceedings which may involve substantial costs for the Commission for the purpose of deriving direct and substantial benefits far above and beyond benefits available to the general public from the action sought to be taken by the Commission in such proceedings. An obvious example is a proceeding, such as the "City of Paris" or "Crisp County" proceedings, initiated by a distribution system, or a municipally or cooperatively owned electric system which is not regarded as a "public utility" under the Federal Power Act. In recent years, much of the Commission's time and effort and, we presume, a substantial portion of the Commission's budgeted funds, have been devoted to interconnection and coordination proceedings initiated by such municipally and cooperatively owned utilities.

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The applications in such proceedings have generally sought to use the Commission's processes to obtain special benefits for the applying municipally and cooperatively owned utilities above and beyond those which accrue to the public at large and, where granted, such proceedings cannot help but result in "more immediate or substantial gains or values" to such applicant than those which accrue to the general public. On the basis of the foregoing, the undersigned believe that, in fairness and equity, and if the Budget Bureau's guidelines are to be complied with, charges associated with such proceedings should be assessed directly against the applicant in such proceedings who will receive the benefit, assuming the proceeding is well founded, and who should be responsible for the costs incurred if the relief sought is not granted by the Commission.

C. *Assessment of Annual Charges on the Basis of Gross Revenues:* FPC's jurisdiction under Part II of the Federal Power Act over public utilities such as the undersigned is based in general on the portion of such utilities' business (in terms of revenue) which is made up of sales for resale in interstate commerce. In the case of the undersigned, the revenue from sales for resale in interstate commerce amount to a relatively small portion of gross revenue. For the year 1969, in the case of Appalachian Power Company, Indiana & Michigan Electric Company and Ohio Power Company, sales to ultimate customers, which are not subject to the Commission's jurisdiction, and gross revenue were as follows:

	Sales to Ultimate Customers	Gross Revenue
Appalachian Power Company	$157,028,000	$182,929,000
Indiana & Michigan Electric Company	112,659,000	148,882,000
Ohio Power Company	210, 984,000	244,374,000

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Thus, in the case of Ohio Power Company revenue from sales for resale – $29,916,000 – accounted for less than 13% of gross revenues in 1969 and involved service to 25 out of a total of 527,573 customers as of the end of 1969. In the case of Appalachian and I&M revenue from sales for resale represented 13.3% and 23.4% of gross revenue, respectively. Furthermore, revenues from sales to ultimate customers, subject to the jurisdiction of state regulatory agencies, frequently form the basis of charges assessed by these state agencies to offset the cost of such state commission regulation. Basing the proposed FPC annual charges on gross revenue would therefore, in many instances, result in double payment of charges on the basis of revenues from ultimate customers, which is not fair, equitable and (since FPC has no jurisdiction over such business) necessary under any standard with which we are familiar.

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As a result, it is submitted that the formula to recoup costs of the Commission's regulatory program, other than those for which specific fees are established, should be based only on revenues of that portion of each of the utility's business subject to the Commission's jurisdiction and not on the gross revenues of each of the utilities.

II. *Section 36.2(e), (g) and (h) – Fees in Connection with Rate Filings*

Subsections (g) and (h) of Section 36.2 provide for a sliding scale of fees in connection with rate schedule filings involving rate increases. On the other hand, Subsection (e) provides a flat $100 fee for rate schedule filings other than those involving rate increases.

The complexity and resulting cost to FPC of rate increase filings do not depend on the amount of money involved in such rate increases. Rather, the complexity of such proceedings depends primarily on whether or not formal proceedings, *i.e.*, hearings,

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pretrial conferences, negotiating conferences, etc., are held, the degree of Staff preparation therefor and participation therein and the length thereof. The complexity of the system involved and of the rates will also have some effect. The cost to the Commission of rate increase proposals involving similar formal proceedings and a similar degree of Staff preparation and participation initiated by a specific utility should be approximately the same regardless of whether the rate increase requested is $1,000,000, $5,000,000 or $10,000,000. On the other hand, processing a $1,000,000 rate increase proposal involving a full dress hearing with Staff participation should be more burdensome and expensive for the Commission than a $5,000,000 rate increase proposal where no hearing is required or where Staff participation is minimal. The complexity of the applying system and of its rate structure will also not necessarily vary with the amount of increase in rates proposed. On the basis of the foregoing, it would

appear that a scale of fees related to whether or not there is a hearing, number of hearing days and degree of Staff participation in connection with a rate proceeding would appear to be a far more equitable means of ascertaining the fee to be charged in connection with such a proceeding than the sliding scale, based on the amount of increase sought, presently proposed.

The $100 fee proposed for rate schedule filings other than rate increases in Subsection (e), while adequate for voluntary decreases in rates sought to be published by utilities, is clearly inadequate in the case of proceedings for involuntary rate decreases brought by wholesale customers of a utility company. As the Commission is well aware, such involuntary rate reduction proceedings can drag on and

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involve equally as much or more time, effort and cost on the part of the Commission and its Staff than rate increase proceedings. When a rate reduction proceeding results in a decrease in rates, benefitting solely the applicant and its customers, and equally when the proceeding does not result in a reduction of rates and therefore its initiation was not justified, the costs associated with such a proceedings should in fairness and equity be borne by the party seeking the rate reduction.

It is therefore respectfully submitted that a scale of fees substantially similar to that established for rate increase proceedings be established for involuntary rate reduction proceedings to be assessed against the party filing the application for an involuntary rate reduction.

III. *Fees for Applications to Hold Interlocking Positions*

Section 36.2(i) would impose a fee of $100 for applications under Section 305(b) of the Federal Power Act. Section 305(b) was adopted to subject to regulation interlocking directorships and senior officerships between unaffiliated utilities, utilities and utility equipment manufacturers and utilities and underwriters of utility securities. In systems such as the American Electric Power System, there are necessarily a large number of

such interlocking positions, which do not require the same degree of regulatory scrutiny, if indeed they were intended to be regulated at all, as do interlocks between utilities not operated under common control or ownership pursuant to authorization of the Federal Power commission or the Securities and Exchange Commission.

The undersigned respectfully submit that the Commission could save itself a great deal of time, expense and effort if it were to amend its "Part 45 – Application for Authority to Hold

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Interlocking Positions" regulations. Part 45 is promulgated under Section 305(b) of the Federal Power Act, which, in pertinent part, provides:

> "... it shall be unlawful for any person to hold the position of officer or director of more than one public utility ... unless the holding of such positions shall have been authorized by order of the Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby."

Under present practice, officers and directors of utilities within a holding company system are required to make formal application, a document of some ten pages in length, to hold an additional position within the same system. The same application must be filed and the same procedure followed, where the positions involved are in utilities operated under common control pursuant to FPC or SEC authorization, as is required where positions in unaffiliated utilities are involved. Indeed, the fact that the Federal Power Commission has previously authorized the applicant to hold other positions within the same system is also not considered sufficient precedent to obviate the need for another long form application.

It is submitted that, where utility companies are operated under common control pursuant to FPC or SEC authorization, the evils which this portion of Section 305(b) was intended to

prevent cannot arise and public or private interests cannot be adversely affected. Numerous such application are filed with the Commission each year and valuable time of the companies and the Commission Staff is spent in working over such applications. We believe this is highly wasteful and the proposed $100 fee for each such application proposed would constitute a further unnecessary burden on the companies and their customers.

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The Interstate Commerce Commission, faced with precisely the same situation under virtually identical statutory provisions, recognized that private and public interests would not be adversely affected by interlocking officers and directors of carriers operated under common control pursuant to ICC authority and, by order dated May 1, 1970 in Ex Parte No. 260, eliminated this unnecessary burden on the carriers and on its own processes. The pertinent part of Section 20(a) (12) of the Interstate Commerce Act, which governs authorization for interlocking positions, provides:

> "... it shall be unlawful for any person to hold the position of officer or director of more than one carrier, unless such holding shall have been authorized by order of the Commission, upon due showing, in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby."

ICC, in a rulemaking proceeding, gave blanket authorization for interlocking positions, provided the positions were in carriers which were lawfully operated under common control or management pursuant to approval and authorization of the Interstate Commerce Commission under Section 5 of the Interstate Commerce Act or pursuant to a control relationship existing since before June 16, 1933. (See ICC Order dated May 1, 1970 in Ex Parte No. 260, a copy of which is attached hereto as Appendix A for the convenience of the Commission.)

Blanket authorization should be granted by the Federal Power Commission under Section 305(b), after notice, through

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a rulemaking proceeding, such blanket authorization to be limited to positions held in utilities which are lawfully operated under common control or management pursuant to approval and authorization of the FPC under Section 203 of the Federal Power Act or of the SEC pursuant to Sections 9, 10 and 11 of the Public Utility Holding Company Act of 1935.

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Such blanket authorization would clearly be in the public interest and would obviate the burden presently placed on FPC and its Staff in connection with most of the Section 305(b) applications presently submitted to it. The proposed rulemaking recommended herein would also obviate the unnecessary expense of the proposed $100 fee to these companies and eliminate as well the burdensome paper work involved.

Very truly yours,
American Electric Power Service
Corporation
on behalf of
Appalachian Power Company
Indiana & Michigan Electric Company
Kentucky Power Company
Kingsport Power Company
Michigan Power Company
Ohio Power Company
Wheeling Electric Company

By
/s/ Herbert B. Cohn
Executive Vice President

HBC:dw
Attachment

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APPENDIX A

FEDERAL REGISTER, VOL. 35, NO. 96, MAY 16, 1970

TITLE 49 – TRANSPORTATION

Chapter X – Interstate Commerce Commission

Subchapter B – Practice and Procedure

[Ex Parte No. 260]

PART 1112 – INTERLOCKING OFFICERS

Miscellaneous Amendments

Order. At a general session of the interstate Commerce Commission, held at its office in Washington, D.C., on the 1st day of May 1970.

It appearing, that the Commission, on November 20, 1969, issued a notice of proposed rulemaking in this proceeding, under authority of sections 4 and 12 of the Administrative Procedure Act (5 U.S.C. 553 and 559) and sections 12, 17, and 20a(12) of the Interstate Commerce Act, for the purpose of considering whether a rule proposed by the Association of American Railroads, making the existing regulations inapplicable to persons holding or proposing to hold certain interlocking positions, should be adopted and supplemented by a blanket authorization for the holding of such positions;

It further appearing, that notice to all interested parties was given through publication of said notice in the FEDERAL REGISTER of December 9, 1969 (34 F.R. 19471-19472), and interested parties were invited to submit views and suggestions regarding the proposed rule and

It further appearing, that various parties submitted views and suggestions, and the Commission has considered such responses and, on the date hereof, has made and filed its report setting forth its conclusions and findings and its reasons therefore, which report is hereby referred to and made a part hereof:

It is ordered, That Part 1112 of Chapter X of Title 49 of the Code of Federal Regulations be, and it is hereby, amended by adding the following numbered new sections:

§1112.9 Common control.

It shall not be necessary for any person to secure an order of authorization under the foregoing provisions to hold the position of officer or director of two or more carriers, if such carriers are operated under common control or management, either.

(a) Pursuant to approval and authority of the Commission granted under section 5 of the act, or

(b) Pursuant to a controlling, controlled, or common control relationship which has existed between such carriers since before June 16, 1933.

§1112.10 Jointly used terminal properties.

Any person holding the position of officer or director of a carrier is hereby relieved from the foregoing provisions to the extent that he may also hold a directorship and any other position to which he may be elected or appointed with a terminal railroad the properties of which are operated or used by such carrier jointly with other carriers.

(Secs. 12, 17 and 20a, 24 Stat. 383, 40 Stat. 270, and 41 Stat. 494, all as amended; 49 U.S.C. 12, 17 and 20a; 5 U.S.C. 553 and 559)

It is further ordered, That persons holding the position of officer or director of a carrier be, and they are hereby, authorized to hold any directorship or other position to which they may be elected or appointed with more than one carrier, within the scope of section 20 a (12) of the Interstate Commerce Act, when such carriers are lawfully operated under common control or management, or where one or more carriers is a terminal railroad company operated under lawful joint control of two or more carriers;

It is further ordered, That this order shall be effective on the date it is served; and

It is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the office

of the Secretary of the Interstate Commerce Commission, Washington, D.C., and by filing a copy thereof with the Director of the Federal Register.

By the Commission.

[SEAL]

By:

/s/ H. Neil Garson,
Secretary

[F.R. Doc. 70-6098; Filed, May 15, 1970; 8:51 a.m.]

Federal Register, Vol. 35, No. 96
Saturday, May 16, 1970

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CONSUMERS POWER COMPANY

J. W. Kluberg
Vice President and Controller

General Offices: 212 W. Michigan Ave.
Jackson, Michigan 49201
Area Code 517 788-0700

January 21, 1971

Notice of Proposed Rulemaking - Docket R-408
(18 CFR, Parts 3, 32, 33, 34, 35, 36, 45 and 159)

Federal Power Commission
441 G Street, N.W.
Washington, D.C. 20426

Gentlemen:

Att: Mr. Gordon M. Grant,
Secretary

This letter is submitted in response to your Notice of Proposed Rulemaking issued November 25, 1970 in Docket R-408. Correspondence concerning this submission should be addressed to:

Mr. John W. Kluberg
Vice President and Controller
Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201
Telephone: 517 - 788-0700

As a preliminary matter, Consumers Power Company notes an apparent error in the language of proposed Regulation Section 36.1(a) wherein there is a reference to deduction of "the amounts reserved pursuant to provisions of Paragraph (c) of this section and Section 36.2 of this part." For the purpose of making its comments, Consumers Power Company has assumed that only Section 36.2 fees would be deducted from the total annual costs of administration. In addition, it is unclear to us as to the effective date for this proposed change in the Commission's regulations. The only reference we can find in the proposed rulemaking to the effective date is in the second

full paragraph on Page 4 where it is indicated that the fee schedules proposed to be adopted have been prepared "to recoup by way of payment into the Treasury of the United States the sums reasonably allocable to the estimated costs in FY 1971 of rendering the types of services performed by the Commission as reflected by costs experienced in FY 1970." Inasmuch as fiscal 1971 is already over half completed, we would recommend that any order issued be effective with fiscal year 1972 beginning July 1, 1971.

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Turning to its substantive comments, Consumers Power Company takes strong exception to the provision of this proposed rulemaking, namely proposed Regulation Section 36.1, which would assess each public utility for such costs of administration of Parts II and III of the Federal Power Act as are not covered by specific fees. The portion of Title V of the Independent Offices Appropriations Act for the year ending June 30, 1952, which was included in the proposed rulemaking, indicated that the federal agency could charge fair and equitable fees for the performance of services which are of value to the recipient. Thus, it would appear that it would be necessary to be able to identify work performed for a specific benefiting person or company. Further, rates developed for that work must be fair and equitable, which implies some relationship between the fee charged and the cost of performing the service. It would appear, therefore, that this would preclude the Commission from charging regulated utilities for the general costs of the Commission which cannot be identified as applying to a specific service for a specific company. If this were not so, it is Consumers Power Company's contention that the provision would permit the Commission to pass on to utility companies not only the normal costs of administration but any additional costs, without limit, that the Commission might choose to incur. The removal of all monetary discipline is not in the public interest.

Even assuming the appropriateness of recovery of total costs from utility companies, the recovery should be made through fees and rates published in advance and applicable to particular filings before the Commission. If utilities are to bear such costs, they should be aware, prior to making a filing, of the extent of their burden. Such a manner of assessing costs of administration might even restrict the number of proceedings filed with the Commission and might thus help to reduce costs.

Finally, Consumers Power Company takes exception to the proposed manner of assessment found in Section 36.1(b), that

> "for each calendar year terminating in such fiscal period the costs of administration determined under paragraph (a) of this section shall be assessed against each public utility in the proportion that the gross revenues of such public utility bear to the sum of the gross revenues of public utilities for the like period."

Consumers Power Company had gross electric revenues in 1969 of almost $308,000,000 and total sales revenue of almost $305,000,000. Over 97% of the sales revenue was obtained from sales at rates prescribed by the Michigan Public Service Commission with another almost 1% obtained from sales to municipalities within the state under separate agreements. Less than 2% of 1969 sales revenues were derived from customers whose rates may be subject to Commission jurisdiction. Under these circumstances, which are expected to continue indefinitely, it seems totally unfair for

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Consumers Power Company to be assessed for costs of administration on the basis of its gross revenues. The proposed assessment bears no reasonable relationship to the costs of the Commission with regard to the Company's particular activities before the Commission.

Accordingly, Consumers Power Company urges that, if the proposed assessment of costs is to be implemented, the assessment be keyed to revenues arising out of jurisdictional sales.

Yours very truly,

By:
/s/ John W. Kluberg

JWK/pb

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WISCONSIN ELECTRIC POWER COMPANY

231 West Michigan Street
Milwaukee, Wisconsin 53201

January 21, 1971
Docket No. R-408

Federal Power Commission
Washington, D.C. 20426

Gentlemen:

Proposed Revision of Fee Schedules

We do not have any disagreement with the basic intent of the proposed changes revising existing fees and establishing new schedules of fees to be paid by electric and gas companies under Parts II and III of the Federal Power Act and under the Natural Gas Act. We do, however, feel that much more clarification is needed regarding the filing fees, particularly as to how they apply to electric utilities. The sliding percentage scale proposed for major rate increases based on gross revenues would be inequitable. It does not necessarily follow that the expense associated with a particular filing is proportional to the amount of the rate increase requested. For example, is the expense associated with a request for a $500,000 increase five times the expense associated with a $100,000 increase? We feel it would be more appropriate to gear the increase to the complexity of the filing. In addition, the proposed fee schedule apparently is based on the amount of increased revenue requested at the time of filing rather than on the amount of revenue actually granted. Thus, it would appear that the amount of the fee required to be paid may have no relationship with the amount of any rate increase ultimately granted.

Under Section 36.2 Filing Fees, paragraphs (c) and (e) do not specify whether a filing fee is required from each party to the agreement being filed or if only one fee applies and

whether it would be paid by one party or divided among the parties. Another question is whether a filing fee applies to concurrences as well as to the parties actually making filings. The fee seems to be high for minor changes in existing agreements not requiring Commission acceptance, for instance changes in a metering point or cancellation of a rate schedule.

Under Section 36.3 Miscellaneous, it is stated that "No fees will be refunded". This provision appears unfair, particularly if no part of a requested rate increase is granted. Furthermore, there is no provision for settlement of a controversy on the amount of the fee with a possibility that a rate decision could be withheld until the fee controversy is settled. In fact, under Section 34.2, it is prescribed that the

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fee described in Part 36 accompany the application, adding one more requirement to an already complicated filing procedure. It seems unduly harsh that no refund would be permitted if a fee were paid in error or the amount of the fee was incorrectly applied and a lower fee should have been paid.

As I have stated above, we are not disagreeing with the basic purpose of establishing new schedules of fees to be paid by utilities to cover certain costs of the Commission, however, we do feel that the schedule of fees as proposed in this Docket are not only confusing in some respects but are also excessive, especially in respect to minor matters requiring filing and in respect to the percentage scale applied to applications for rate increases.

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We appreciate the opportunity to comment on the proposed revisions of the fee schedules before they are adopted.

Very truly yours,

WISCONSIN ELECTRIC POWER COMPANY

By

/s/ John G. Quale

President

John G. Quale

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Revision of Existing amd Establishment of New Schedules of Fees to be Paid by Ellectric Public Utility Companies and Natural Gas Companies and for Miscellaneous Services Rendered by the Federal Power Commission	)))))))	DOCKET NO. R-408

COMMENTS AND RECOMMENDATIONS OF COLORADO INTERSTATE GAS COMPANY a division of COLORADO INTERSTATE CORPORATION

I. INTRODUCTORY STATEMENT

Colorado Interstate Gias Company, a division of Colorado Interstate Corporation ("CIG"), hereby submits its comments and recommendations concerning the Commission's proposal to revise existing fee schedules and to establish new fee schedules for natural gas companies, as proposed in the Notice of Proposed Rulemaking issued November 25, 1970. GIG is a Class A natural gas company under the jiurisdiction of the Federal Power Commission and therefore is directly affected by the Commission's proposal.

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II. CORRESPONDENCE AND COMMUNICATIONS

Correspondence and communications in regard to this matter should be addressed to:

William H. Cook, Vice President
Colorado Interstate Gas Company, a division of
Colorado Interstate Corporation
Post Office Box 1087
Colorado Springs, Colorado 80901
Phone: (303) 473-2300
and to:
Walter W. Sapp, Vice President & General Counsel
Colorado Interstate Corporation
Post Office Box 1087
Colorado Springs, Colorado 80901
Phone: (303) 473-2300

III.
STATEMENT OF POSITION

CIG does not request a conference at the Federal Power Commission regarding this matter. However, if such conference is scheduled, CIG requests that it be advised.

With respect to the proposed increased fees under Section 159.2 of the Commission's Regulations under the Natural Gas Act, CIG does not object to the proposed level of increased fees provided, and so long as, proper cost studies demonstrate the need for such increased level of fees to approximately offset the costs to the FPC of gas pipeline certificate proceedings. However, CIG does urge that certificates for acquisitions or mergers affecting existing certificated

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pipeline facilities be excluded from application of the provisions of Section 159.2 and that separate and more equitable fee schedules be adopted for such certificate proceedings. The Commission acknowledged in *Northwest Pipeline Corporation*, 41 FPC 418 (1969), "that any future revision [of Section 159.2] should stem from an overall review of the fee schedule and not from peicemeal actions to carve out for separate treatment various classes of certification which arguably involve, on the average, different degrees

of processing cost or recipient value." Docket No. R-408 undeniably constitutes such "an overall review of the fee schedules." Acquisition or merger certifications unquestionably "involve, on the average, different degrees of processing cost or recipient value" as compared to original construction certificates. At the very least the questions of original supply, market and feasibility have previously been determined with respect to existing certificated facilities. Indeed it is difficult to conceive of a situation where the Commission could incur as much expense in a certificate application for construction of the same facilities. Therefore, CIG urges that a separate fee schedule be made applicable to certificate applications for acquisition of pipeline facilities (including mergers) providing for rates that will generate fees more commensurate with costs of such proceedings which CIG submits must be substantially less than costs of applications for construction certificates.

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The Commission's proposed new Section 159.2a would assess costs of administration in excess of the amounts received pursuant to Sections 159.1 and 159.2 (as proposed)[1] against each Class A and Class B natural gas company in the proportion that each company's gas deliveries bears to total gas deliveries of all such companies. CIG submits that language of proposed Section 159.2a is not clear with respect to the time when payments will be due, the period as to which each payment is applicable, nor the period as to which gas deliveries are to be measured. Also proposed paragraph 159.2a (b) reads in part ". . . the costs of administration determined under paragraph (a) of this section shall be assessed . . ." whereas CIG suggests that to accurately reflect the intent of the Commis mission this part should read "the costs of administration *less the amounts received pursuant to the provisions of Sections 159.1 and 159.2 of this Part* as determined under paragraph (a) of this section shall be assesed . . ." (additions underlined).

It is the position of CIG that whatever the proper interpretation of proposed Section 159.2a may be, it is manifestly unfair because:

[1]which excess represents mainly the costs to the Commission of pipeline rate filings as stated in the Notice issued herein

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(a) Companies with higher incidence of rate proceedings creating such balance of costs would benefit at the

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expense of companies with more stable rate structures and lower incidence of rate proceedings;

(b) It imposes an inherent regulatory lag in that the amount of the assessment as proposed can never be ascertained until sometime after the period for which the assessment is applicable. Thus it would not be possible to estimate future assessments which would be an appropriate adjustment in a pipeline company rate case test period; and

(c) It includes nonjurisdictional sales in its allocation formula to the detriment of companies with a larger than average proportion of nonjurisdictional sales with respect to which rate filings are not required.

Rather than allocating such balance of administrative costs (purportedly incurred from rate filings) on the basis of gas deliveries CIG submits that it would be appropriate and fair to all concerned to recover such costs through fees imposed on rate filings. In each case the amount of such fee should represent that per cent of the annual amount of rate increase sought which would cover approximately the cost of the rate proceeding. Thus those companies involved in rate proceedings would pay the costs thereof rather than all companies sharing such costs on a basis unrelated to the generation of such costs. Such a system of fees would eliminate all three objections to the proposed Section 159.2a raised above and would follow the system of fees proposed for rate increase filings under the Federal Power Act.

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With respect to other routine rate filings such as minor tariff changes and service agreements, CIG suggests that a schedule of flat fees be provided to recover costs thereof to the Commission.

If CIG's suggestion of providing fees on rate filings is not acceptable, we suggest that the balance of administrative costs proposed to be allocated on the basis of gas deliveries to be allocated instead on the basis of jurisdictional gas revenues which bear a more direct relationship with rate filings than do total gas deliveries including nonjurisdictional sales. Further, to avoid the regulatory lag problem, the fee should be established in advance so that each company will know what the cost will be in the coming year.

IV.
SUMMARY

In summary, CIG does not object to the increased certificate fees so long as cost studies demonstrate the need for the increased level of fees. CIG does urge that the fees for acquisitions or mergers of existing certificated facilities be revised to more properly reflect the lower costs of such proceedings. Further, CIG believes that the costs of pipeline rate proceedings would be more equitably charged to each company through a fee related to the increase proposed in any rate filing.

Respectfully submitted,
COLORADO INTERSTATE GAS COMPANY
a division of
COLORADO INTERSTATE CORPORATION

By:
/s/ William H. Cook
Vice President

Dated: January 29, 1971

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and Natural Gas Companies and for Miscellaneous Service Rendered by the Federal Power Commission	))))))	Docket No. R-408

VIEWS AND COMMENTS OF INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA

The Independent Natural Gas Association of America (INGAA), pursuant to the Commission's Notice of Proposed Rulemaking herein dated November 25, 1970, submits its views and comments.

I
INTRODUCTION

In tis Notice, the Commission proposes, in connection with its regulation of "natural gas companies" under the Natural Gas Act (Act), (1) to revise upqard existing fees required in connection with pipeline certificate applications, (2) to establish a new annual assessment to be paid by pipelines based on the costs of the Commission's administration of natural gas "pipeline programs", and (3) to establish a further annual assessment to be paid by pipelines based on reserves certificated during the year. INGAA's members are directly affected by the ammendments to

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the Regulations as proposed herein and the comments to follow are submitted on their behalf. INGAA questions seriously the legal propriety of the proposed rule and the manner and extent to which the Commission would impose new fees on gas pipeline companies. Further, the terms of the proposed "assessment"

regulations are unclear, and hence, in the absence of appropriate clarification, will be a source of constant future dispute as to fairness of the application of the regulations to the particular pipeline companies assessed.

II
THE BASIC RATIONALE FOR THE ANNUAL "COST" ASSESSMENT

In its Notice, the Commission states that while its pipeline certificate application fees need slight upqard adjustment for a "self-sustaining" pipeline certificate program, other "pipeline programs", primarily involving rate filings, have not been subjected to a charge. Accordingly, a yearly assessment, based on the amount of natural gas delivered annually, is proposed as means of obtaining revenues to cover such costs. Underlying this approach is the unstated assumption that a pipeline, in submitting rate filings, is seeking a special benefit from the government. Such an assumption is simply contrary to the Natural Gas Act. The basic thrust

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of Section 4 of the Act is to provide just and reasonable rates for the benefit of the general public. The Commission recognized this situation when it first proposed the charging of fees in Docket No. R-282 in 1965. In its Notice of Proposed Rulemaking in that docket dated September 15, 1965, the Commission stated:

> "The Commission has reviewed its functions under the Federal Power Act and the Natural Gas Act and is of the opinion that the assessment of user charges or other fees with respect to the exercise of our regulatory activities under Parts II and III of the Federal Power Act and under the generally parallel rate and accounting provisions of the Natural Gas Act would not be appropriate since these activities are primarily for the benefit of the general public rather than the regulated companies." (Mimeo, cy. p. 2)

In this respect, the Commission's attention is also directed to Circular No. A-25, issued by the Bureau of the Budget on September 23, 1959 (cited at page 7 of the Commission's Notice in this proceeding), which provides that as a matter of general policy, under the 1952 Appropriation Act, [31 USC 483(a)], "No charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public. . . ." Clearly, the "beneficiary" of the Commission's "services" under Section 4 of the Act is not the filing company, but rather, the "general public". Moreover, much of the Commission's activities in processing rate filings is generated by participation by parties other than the applicant. In many instances the time expended by the Commission and the staff is largely

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directed to resolving the issues raised by such participants. To load the costs of the administration of the Natural Gas Act on the pipeline companies, therefore, is, we submit, unfair and unduly discriminatory and contrary to the 1952 Appropriations Act. The cost of securing those services should be paid out of general taxes, and not by an improper taxation, or "assessment" of the regulated companies.

III

THE ANNUAL RESERVES ADDED ASSESSMENT

In its Notice (page 1), the Commission states that it is proposing new schedules of fees which will "be applicable to electric utility companies and *natural gas producers* and pipelines". Thereafter, the Commission states that it is proposing a "fee schedule which will return . . . the costs of the *producer certificate program*" based on annual "new" reserves committed for interstate deliveries. Then, however, for reasons of "administrative convenience", which are not stated, the Commission con-

cludes that certain pipelines[1] should bear all of the cost of the "producer certificate program". This patently and unduly discriminates between pipeline and producer "natural gas companies" without even a suggested factual basis.

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Notwithstanding the "administrative convenience" referred to in the Notice, INGAA believes that the costs of producer regulation should be borne by the producer segment of the industry which generates such costs and not the pipelines. Here again, however, producer regulation is primarily concerned with rates so that the comments heretofore noted with respect to pipeline rate filings are apposite (Also see Notice of Proposed Rulemaking, Docket No. R-282, p. 2).

One further point should be made. Proposed §159.2a(c) would assess pipelines for new reserves certificated during the year covered by the Form 15 report as shown in item 14 of such form. What reserves are included in item 14 is not clear. If, e.g., volumes of gas certificated for sale from one pipeline to another are to be included, there would clearly be a doubling up of the assessment since the supplying pipeline in all likelihood would have previously acquired reserves to support the sale and would pay a fee for the reserves so acquired. The purchasing pipeline (or pipelines) would thus be paying for new reserves certificated which have already been accounted for. This doubling or tripling effect is plainly improper and may well yield revenues in excess of the cost of the producer certificate program.[2] Since no indication has been given of

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[1]The Commission should indicate why it is fair and equitable to require only those pipelines which file Form 15s to bear any and all of the costs of the Commission's "Producer Certificate Program".

[2]In any event the Commission should make clear also that new reserves certificated should not include LNG nor should fees be assessed on the basis of reserves behind any LNG project.

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the nature of these costs, it is impossible for the pipelines really to assess the impact of this proposal. Manifestly, the pipelines should not be required to pay fees on a basis which has no relationship to costs and from which the pipelines derive no direct benefit as contemplated by Circular A-25.

IV
MATTERS REQUIRING CLARIFICATION

Assuming, *arguendo*, the legality of the Commission's proposal, and irrespective of the above informities, the text of the Notice and the terms of the proposed "annual assessment" regulations raise a number of uncertainties which INGAA believes require clarification prior to any further action in this proceeding.

1. In the text of the Notice (page 5), the Commission observes that since the "remaining costs of carrying out the functions of our pipeline programs" [i.e., other than certificate programs] have not been subject to charges, and annual assessment of pipelines should be required to allow for a recovery of such "remaining costs". The difficulty here is that the pipelines have no way of knowing what those "programs" are, what the costs are or what assessment will be made against each company. In these and other respects the instant Notice is woefully lacking. There is no way in which the companies can even begin to appraise the impact on them, either individually or collectively. At the very least the Commission

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should advise the companies not only of the costs to be recovered but the basis for their determination. Assuming the Commission can properly assess pipelines for costs incurred in administering the Act as proposed herein, INGAA urgently requests that this matter be re-noticed and that the Commission spell out in greater detail the basis upon which its costs are to be determined, and the methods it uses or intends to use in allocating costs to "pipe-

line programs". This would provide an opportunity for affected pipelines to review and comment on the development of standards of costing and avoid possible disputes later over shifting of inappropriate costs to the pipelines.

2. The Commission should specify how and when pipelines are to "recoup" the annual "cost" and reserves-added assessment, and provide for the accumulation of carrying charges where appropriate. In this connection, it should be noted that certificate filing fees are capitalized as part of the certificated priject, and interest during construction on such amounts is allowed until the certificated facilities are placed in service.

Further, for each calendar year covered by proposed Section 159.2a the Commission should provide the companies at an early date in the year, well in advance of billing, an estimate of costs and the apportionment of fees thereunder. In this way the pipelines will have an

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opportunity to comment upon the assessment and could at least budget, on an estimated basis, the fees it would incur and could take appropriate action to recover such fees on a reasonably timely basis.

3. In the text of the Notice, the Commission concludes that its "proposal to allocate estimated costs among jurisdictional companies on the basis of their relative amounts of natural gas delivered seems fair and equitable". INGAA does not agree that deliveries of gas provide a "fair and equitable" basis for allocating costs among jurisdictional companies. As indicated previously, INGAA submits there is no basic equity or fairness in the relationship between a particular company's deliveries and the total deliveries of all companies. At best, the ratio merely reflects the company's operations versus the multi-company industry structure for handling deliveries of gas. Thus, any total delivery figure for all Class A and B companies (upon which individual company

proportions may be based)[3] will involve double or tripple counting of the same gas volumes depending on the number of Class A or B companies in the chain from producer to city gate. As such, the individual company's proportionate position is more a matter of accident than equity or fairness.

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4. The rule as proposed, as well as existing Section 159.2, would apply the same fees for acquisitions or mergers affecting existing certificated pipeline facilities as it would to applications for original construction certificates. INGAA urges that certificates for acquisitions or mergers be excluded from application of the provisions of Section 159.2 and that separate and more equitable fee schedules be adopted for such certificate proceedings. The Commission acknowledged in *Northwest Pipeline Corporation*, 41 FPC 418 (1969), "that any future revision [of Section 159.2] should stem from an overall review of the fee schedule and not from peicemeal actions to carve out for separate treatment various classes of certification which arguably involve, on the average, different degrees of processing cost or recipient value" as compared to original construction certificates. At the very least the question of original supply, market and feasibility have previously been determined with respect to existing certificated facilities. Accordingly, a separate fee schedule should be made applicable to certificate applications for acquisition of pipeline facilities (including mergers) providing for rates that will generate fees more commensurate with the costs of such proceedings which INGAA submits will, for the most part, be less than costs of applications for construction certificates.

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[3]In this regard the Commisison should also specify the reasons why it is fair and reasonable to assess Class A and B natural gas companies with costs attributable to Class C and D companies. Certainly, the A and B companies derive no benefit from such activity and to impose the costs upon them would be contrary to Circular No. A-25 as well as the Appropriations Act of 1952.

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CONCLUSION

The proposal of the Commission herein to impose all of the costs of administration of the Natural Gas Act on jurisdictional gas pipeline companies is beyond the directives of Congress relating to user charges. In the last analysis, the general public is the true beneficiary of the regulatory scheme embraced in the Act and the public should share along with the pipelines the costs of administering the Act. INGAA is opposed to the proposed rule, therefore, and urges that it not be adopted by the Commission. Assuming, *arguendo*, the Commission concludes that such costs should be imposed on the industry, we submit that the instant Notice is lacking in the specificity necessary to appraise the industry of the actual costs it would be required to carry, and the manner and methods by which the costs are or are proposed to be derived. Further, INGAA does not believe that the assessment procedures embodied in proposed Section 159.2a are either fair or equitable to the pipelines and they should not be adopted in their present form. INGAA urges the Commission, therefore, to re-notice this matter and to specify more definitively the annual costs it would impose on the pipelines and the methods used and bases for such costs.

INGAA requests that a conference be held and that it and its members be permitted to participate therein.

Communications regarding this matter should be addressed to:

Jerome J. McGrath, Vice President and General Counsel
Independent Natural Gas Association of America
1660 L Street, N.W.
Washington, D.C. 20036

Respectfully submitted,
INDEPENDENT NATURAL GAS
ASSOCIATION OF AMERICA

By
/s/ Jerome J. McGrath
Vice President and General Counsel

Washington, D.C.
February 10, 1971

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TENNESSEE GAS PIPELINE COMPANY
A DIVISION OF TENNECO INC.

P.O. Box 2511, Tennessee Building
Houston, Texas 77001

February 10, 1971

Mr. Kenneth Plumb, Acting Secretary
Federal Power Commission
441 G Street, N.W.
Washington, D.C. 20426

Re: Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and Natural Gas Companies and for Miscellaneous Service Rendered by the Federal Power Commission, Docket No. R-408

Dear Mr. Plumb:

The Independent Natural Gas Association of America is filing views and comments in response to the Federal Power Commission's proposed rules and regulations in the above matter. Tennessee Gas Pipeline Company, A Division of Tenneco Inc., hereby adopts and endorses INGAA's views and comments.

Please address all communications in this rulemaking proceeding to:

Harry S. Welch, Vice President
Phillip D. Endom, Attorney
Tennessee Gas Transmission Company
P.O. Box 2511
Houston, Texas 77001

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We respectfully request notice of and the opportunity to participate in any conference which may be convened to discuss the proposed rules.

Respectfully submitted,
TENNESSEE GAS PIPELINE COMPANY
A DIVISION OF TENNECO INC.

By
/s/Phillip D. Endom
Attorney

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

[18 CFR, Parts 3, 11, 32, 33, 34, 35, 36, 45 and 159]

Before Commissioners: John N. Nassikas, Chairman;
Lawrence J. O'Connor, Jr.,
John A. Carver, Jr., and
Albert B. Brooke, Jr.

Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and Natural Gas Companies and for Miscellaneous Services Rendered by the Federal Power Commission	)	Docket No. R-408

ORDER NO. 427

Order amending Part 3 – General Policy and Interpretations, Amending Parts 11, 32, 33, 34, 35 and 45, and adding Part 36 – Regulations Under the Federal Power Act – and Amending Part 159 – Regulations Under the Natural Gas Act

(Issued March 18, 1971)

On November 25, 1970, the Commission issued a Notice of Proposed Rulemaking in this proceeding (35 F.R. 18324, December 2, 1970) proposing to amend its general rules and regulations under the Federal Power Act and the Natural Gas Act to revise the schedules of fees at present imposed in connection with the filing of certain applications by natural gas companies and to establish new schedules of fees and annual charges to be applicable to electric utility companies and natural gas companies.

[2]

Responses were received (exclusive of requests for additional time within which to submit comments[1]) on behalf of 62[2] companies and two industry associations raising questions as to the meaning of certain provisions, suggesting modifications for clarification or on the merits, objecting to the amounts proposed for certain of the services in the noticed schedules of fees and generally questioning the propriety of imposing annual assessments for services rendered in the administration of both Acts or the basis upon which they would be computed. A number of these comments have provided the basis for clarifying this rulemaking and others which have been called to our attention have resulted in revisions incorporating recommendations that will avoid inequities that might otherwise have occurred. The remaining comments and recommendations were considered and those which have been found lacking in merit or not necessary are not discussed in the order herein adopted.

Section 36.1 as proposed clearly stated the Commission's aim that annual assessments covering the balance of the expenses incurred in the administration in each fiscal year of Parts II and III of the Federal Power Act above those recovered by the proposed fees for specified filings be based on gross electric revenues. We proposed that the allocations be based on gross rather than jurisdictional (electric) revenues because of the benefits deriving from our services (both regulatory and involving reliability) since both have direct and substantial impact on the stability

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[1]The notice invited the submission of data, views, comments and suggestions in writing by no later than December 18, 1970; however, by notices issued December 16, 1970 (35 F.R. 19641, December 25, 1970) and January 22, 1971 (36 F.R. 1487, January 30, 1971) the time to do so was extended ultimately to February 5, 1971.

[2]Those responding to the invitation for comments are listed in an appendix attached hereto.

and operations of public utilities regardless of the amount of their revenues derived from jurisdictional sales. However, we recognize

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the jurisdictional sales for resale of many public utilities are relatively small compared to their total revenues and that inequities would result if assessments covering all programs under Parts II and III of the Federal Power Act were based entirely on gross revenues. Accordingly, we have revised this section to provide that the residual costs of administration of our regulatory programs should be allocated on the basis of jurisdictional business but that the costs relating to our coordination and reliability programs which have impact on the total business of the utilities, whether or not jurisdictional, should be allocated on the basis of gross revenues. For the reason above stated, similar revision has been made in Section 159.2a regarding the allocation of assessments among natural gas companies. As revised such companies will be required to pay annual charges covering the residual costs of those programs on the basis of their jurisdictional business whether stemming from sales for resale, transportation of natural gas for others, or both. Other changes in Sections 36.1 and 159.2a have been made for purposes of clarification based on the numerous comments we have received.

We have adopted suggestions that the fees prescribed in connection with the merger or consolidation of facilities be based on a sliding scale instead of a fixed fee. Our design of the fee schedule contemplated a charge of $10,000 for mergers of Class A, Class B utilities or both Class A and B utilities; the mere acquisition of facilities not constituting a merger or consolidation of such utilities, such as the acquisition of a transmission line having a value in excess of $50,000, would have been covered under Section 36.2 (c), as proposed, involving a fee of $500. But this amount would have been payable not only by the applicant disposing of the property but also by the one acquiring it. Instead, we are removing possible ambiguity and providing a more equitable

schedule by requiring payment of a fee, not to exceed $10,000, based on the value of property transferred, as has been proposed. We are also adopting the suggestion that the requisite fee payable upon the filing of applications for the acquisition and disposition of facilities which involve several jurisdictional utilities should be split among them on the theory both the acquiring and disposing utility derive benefit from the transaction. In order to avoid any imposition

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of charges upon non-jurisdictional companies, however, the charges applicable to jurisdictional companies shall be at the rate of ½ percent of the value of facilities acquired and disposed of but not exceeding $5,000 as to each. A non-jurisdictional company acquiring facilities from or disposing of assets to a jurisdictional company will neither be charged nor the costs of such services be borne by the utilities subject to our jurisdiction.

Some filings for rate increases are very small. In such cases a fee of $500 would be inequitable. However, administrative analysis is required regardless of the amount of the increase and it is conceded that a reasonable fee should be imposed for these services. We have accordingly revised proposed Section 36.2 (g) to provide for payment of a flat fee of $100 for increases of less than $5,000, if in sum they constitute no more than one percent of the total charges then in effect with respect to the purchasers affected by such filing. The second requirement is based on our experience that a rate increase though small will necessitate a more thorough evaluation if it constitutes more than a very minor part of the total charges to the customers involved. Where both requirements for the minimum fee are not met, the filing fee will remain at $500 which will also apply to increases from $5,000 to $50,000. Objections to a scaled fee for increases of $50,000 or more are not well taken, since generally our input of services varies directly with the amount of the increases we are required to review. These changes have been made in Section 36.2 (g).

The suggestion that filings for rate increases made under multi-party agreements involving several utilities should be exempt from fee requirements is without merit. The Commission's staff is obligated to evaluate such agreements where filing is required and if they involve rate increases Commission services should not be rendered without charge.

Several responding parties suggested the incorporation of provisions for refunds of various dimensions. The underlying purpose in adopting these fee schedules is to provide for the recoupment to the Treasury for the value of services rendered. Applications which may ultimately be denied in whole or in part after staff review and analysis involve the

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services of the Commission which should be subject to fee charges within the intent of our underlying authority. There is no valid basis for refund in those circumstances. Similarly, the payment of a fee based upon a filing of a rate increase which is ultimately found or conceded to be excessive should not justify a partial refund.

We adopt the suggestion that if an application or filing is withdrawn or rejected as insufficient or for some other reason not involving the input of substantial staff services, the fee should be refunded. If rejection occurs after considerable expenditure of staff time, there is no justification for refund. Accordingly, we have provided for refund in those cases if the filing has been withdrawn or found deficient and rejected. Under our procedures rejection must occur within 30 or 60 days depending on the type of filing; in that time staff effort will not have beem cumulatively large. We have also clarified the status of amended filings in regard to fee requirements and filings for which more than one fee might be payable under these regulations. See Section 36.3.

Two recurrent objections to the proposed regulations require comment. The first, that the Commission does not have authority to charge fees except for and to the extent of the actual cost of specific services rendered has already been considered and was

covered by our discussion in the notice of rulemaking issued in this docket. Congress has by statute vested authority in all agencies of the federal government to prescribe fees or charges for services conferring benefits on persons subject to their jurisdiction so as to render such agencies as fully self-sustaining as possible. The pertinent provision which is included in Title V of the Independent Offices Appropriations Act for the Year Ending June 30, 1952 (65 Stat. 290, 31 USC 483a), reads as follows:

> It is the sense of the Congress that any work, service publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal

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> agency (including wholly owned Government corporations as defined in the Government Corporation Control Act of 1945) to or for any person (including groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of any existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts: *Provided,* That nothing contained in this section shall repeal or modify existing statutes prohibiting the collection, fixing the amount, or directing the disposition of any fee, charge or price: *Provided further,* That nothing contained in this section shall repeal or modify existing statutes prescribing bases for calculation of any fee, charge

or price, but this proviso shall not restrict the redetermination or recalculation in accordance with the prescribed bases of the amount of any such fee, charge or price.

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Pursuant to such statute and to recommendations made at hearings before Congressional appropriation committees, we established by order our first schedule of fees (apart from those under Part I of the Federal Power Act) which were payable in connection with applications filed by natural gas pipeline companies for certificates of public convenience and necessity and for other authorizations as especially beneficial to the recipients of the services rendered in their processing. Order 317, 31 F.R. 430, January 13, 1966, as amended by FPC Order 317-A, 31 F.R. 4890, March 24, 1966, Part 159 of the Commission's Regulations Under the Natural Gas Act, 18 CFR, Part 159.

Congressional appropriation committees have since requested further review of our fee schedules with a view to making increases or adjustments to offset in part the increasing needs for direct appropriations for agency operating expenses. S. Rept. No. 1375, 90th Cong., 2d Sess.; H. Rept. No. 1348, 90th Cong., 2d Sess. More recently, the Chairman of the Subcommittee on Independent Offices and Department of Housing and Urban Development of the Committee on Appropriations of the House of Representatives requested us to review our rate and fee structures with a view to charging gas and utility companies enough to sustain our administrative operations. Hearings, Independent Offices and Department of Housing and Urban Development Appropriations for 1971, 91st Cong., 2d Sess., Part 2, p. 951.

Moreover, we noted that in developing these schedules we have endeavored to adhere to the guidelines contained in Budget Circular No. A-25 by the imposition of charges "to each identifiable recipient for a measurable unit or amount of Government service . . . from which he derives a special benefit." These services include agency action which "provides special benefits . . . above and beyond those which accrue to the public at large . . ." or

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provides "more immediate or substantial gains or values . . . than those which accrue to the general public . . ." or is "performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public . . .".

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Costs directly allocable to a specific type of service rendered to specifically identifiable persons would be effected by charges directly related to that specific service. In determining the amount thereof we are not required to keep cost records on a case-by-case basis but are authorized to average the costs involved in a particular service. *Aeronautical Radio, Inc.* v. *United States*, 335 F.2d 304 (CA7, 1964), certiorari denied, 379 U.S. 966 (1965). Our remaining proposed charges being of benefit overall to the members of both industries would be assessed on a measure of size against those within the ambit of our jurisdictional activities. We deem the allocation formulas we adopt herein to be both reasonable and a practical alternative to the development of a complex, extensive and costly accounting system whereby actual costs involved in each matter would be charged to the parties involved. Even such a system for basing charges would not in all circumstances be equitable since policies developed in prolonged proceedings involving one utility often become applicable to others at a minimum of additional administrative cost. We do not, after considering the content of the responses in this respect, find the comments sufficiently persuasive to require a change in the schedules for annual fees proposed and adopted herein.

We reject the contention that the proposed fees would constitute an illegal imposition of a tax inasmuch as we hold that the proposed charges constitute fees rather than taxes. The distinction between a tax and a fee has been clearly defined by the courts. The cases hold that:

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A tax is an enforced contribution exacted pursuant to legislative authority for the purpose of raising revenue to be used for

public or governmental purposes, and not as payment for a special privilege or a service rendered. *United States* v. *Butler*, 297 U.S. 1, 61 (1936); *Gumby* v. *Yates*, 214 Ga. 17, 102 S.E.2d 548, 550-551 (1958). A fee is a charge fixed by law for services of public officers or for use of a privilege under control of the government. *Fort Smith Gas Co.* v. *Wiseman*, 189 Ark. 675, 74 S.W. 2d 789, 790 (1934). A tax is imposed upon the party paying it by mandate of the public authorities, without his being consulted in regard to its necessity, or having any option as to its payment. The amount is not determined by any reference to the service which he receives from the government, but by his ability to pay, based on property or income. On the other hand, a fee is always voluntary, in the sense that the party who pays it originally has, of his own volition, asked a public officer to perform certain services for him, which presumably bestow upon him a benefit not shared by other members of society. *Stewart* v. *Verde River Irrigation & Power Dist.* 49 Ariz. 531, 68 P. 2d 329, 334, 335.

While it may possibly be argued that the provision of Title V calling for the payment of the amounts collected in fees into the Treasury as miscellaneous receipts is descriptive of a tax, we believe that an overall reading of Title V firmly supports the contention that the fees are not intended for the support of the government as a whole, but rather as a means of sustaining to the fullest extent feasible those agencies of the government which bestow special privileges and services upon certain individuals who may apply for those privileges and services.

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The question whether the proposed schedules constitute a tax is not affected by the method used in their assessment, i.e., whether in fixed amounts or varying in accordance with specified formulae. The proposed charges were not authorized to impose exactions in the support of government in the general undestanding of the term "tax", *United States* v. *Butler*, 297 U.S. 1, 61; *New Jersey Bell Telephone Co.* v. *State Board of Taxes*, 280 U.S.

338, 347, but would be in the nature of impositions "levied to reimburse the state or a subdivision thereof for services rendered rather than to provide public revenue . . ." 51 Am. Jur., Taxation § 20.[3]

The second objection made by a number of the responding parties is to the amounts projected to be recovered under the proposed fee schedules. In essence, those who have raised this contention state that the benefits of regulation should be borne in part by those who also benefit from the services rendered by the administration of both Acts who are not subject to regulation. These comments have merit. While we do not exercise jurisdiction over REA or municipally operated utilities, they do derive benefits from the services we provide under Parts II and III of the Federal Power Act. In this light it would be inequitable to have the privately owned utilities bear the cost of such services and we have accordingly revised Section 36.1 to reflect this change. (We had already excluded from our formula the costs associated with services rendered to other (including federal) agencies since we have not incorporated in the costs to be assessed our expenses incurred in programs directed to servicing other agencies and the public.)

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However, we do not agree that recoupment of part of the costs of all other services rendered to jurisdictional companies should be absorbed by the taxpayers generally since they primarily benefit the public utilities. The extension of the Commission's jurisdiction in 1935 to public utilities was prompted in substantial

[3]State statutes designed to recover in part the costs of administration of their public servibe commissions either on a fixed-fee basis for specific services or as a percentage of some measure of size or value are not infrequent. See compilation in Committee Print prepared by the Subcommittee on Intergovernmental Relations of the Senate Committee on Operations, dated September 11, 1967 entitled, State Utility Commissions, 90th Cong., 1st Sess., p. 22.

part by the deplorable practices of management which resulted in the collapse of the financial structures upon which the electric utility industry had been erected. The creation of regulatory agencies at the federal[4] level and the exercise of the powers delegated by the Congress to them have provided the foundation for the sound financial condition which public utilities and natural gas companies have achieved.[5] We

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recognize that the exercise of our responsibilities in preventing the imposition of rates and charges which are unjust and unreasonable or perferential and prejudicial has provided continuing benefit to consumers, but our actions in this respect have redounded to the benefit of both industries by creating the economic climate for greater usage of the services of the regulated companies which in turn have further strengthened their financial stability and their

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[4]Investigation of both the electric and gas industries by the Federal Trade Commission resulted in the grant of regulatory powers over public utilities. See Title II of the Public Utility Holding Company Act of 1935, 49 Stat. 838. Regulation of natural gas companies, though considered at the time that Act was adopted, was not authorized until 1938. 52 Stat. 821.

[5]A report issued by the Commission in 1950 discussed industry-wide recognition of the benefits accruing from only one facet of the Commission's activities – the adoption of a uniform accounting system. Typical of the comments made was the following in a publication issued by a prominent member of the New York Stock Exchange:

> "A great measure of the improvement in the financial position of the electric utilities has been due to the strengthening of regulatory controls by the Federal Power Commission, and particularly to the enforcement of the new uniform system of accounts.

A trade publication editorialized that

> "At no time in the past twenty years has the electric utility industry of this country been in as sound a position financially as it is today."

Report on the Reclassification and Original Cost of Electric Plant of Public Utilities and Licensees, Federal Power Commission, 1950, pp. 19-20.

ability to sell debt and equity securities required for capital additions to meet ever-increasing demands. In these circumstances we believe that our proposal which would make our operations as self sustaining as reasonably possible is consistent with statutory directives and is equitable, particularly since the charges involved can ultimately be passed on by these companies to their customers as expenses properly includable among items upon which their respective costs of service are based.

The view that the imposition of fees destroys the budgetary restrictions imposed upon agencies like the Federal Power Commission is misplaced since all receipts are payable into the United States Treasury and not available for our use. The Commission's spending power, whether or not such charges are imposed, is predicated on appropriations authorized by the Congress and is dependent solely on the determination of that body as to the funds needed for administration of the powers delegated to us.

These regulations will become effective July 1, 1971. The filing fees will become payable on all applicable filings made after that date and assessments for the costs of administration of the Commission's programs will be made as soon after the close of its fiscal year ending June 30, 1971 as is practicable, except that annual charges relating to the Commission's public utility and natural gas pipeline regulatory programs will be computed and assessed for the first time for the Commission's fiscal year ending June 30, 1972.

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The Commission finds:

(1) That the notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently before this Commission through the submission, in writing, of data, views, comments and suggestions in the manner as described above, are consistent and in accordance with all procedural requirements therefor as prescribed in Section 553 of Title 5 of the United States Code.

(2) That the revisions herein made to the amendments proposed in the notice of rulemaking do not impose a further burden on persons subject to these regulations, do not constitute a substantial departure from the original proposal, and are consistent with the prime purpose of this rulemaking; therefore further notice and opportunity for comment is unnecessary.

(3) Upon consideration of all relevant matters presented, including the arguments, contentions, suggestions and other views expressed in the comments received and having determined that a conference to discuss the proposed amendments was not required, we further find that the amendments to the Commission's regulations adopted herein are necessary and appropriate for carrying out the provisions of the Federal Power Act, the Natural Gas Act, and the Independent Offices Appropriations Act for the Year Ending June 30, 1952.

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The Commission, acting pursuant to the provisions of the Federal Power Act, particularly Section 309 (49 Stat. 858, 16 U.S.C. 825h), the Natural Gas Act, particularly Section 16 (52 Stat. 830, 15 U.S.C. 717o), and the Independent Offices Appropriations Act for the Year Ending June 30, 1952 (65 Stat. 290, 31 U.S.C. 483a), *orders:*

(A) Part 3, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

1. The title of Part 3 is amended by inserting the words "Miscellaneous Charges," immediately preceding the words "Ethical Standards". As so amended the title of Part 3 reads as follows:

   PART 3 – ORGANIZATION: OPERATION: INFORMATION AND REQUESTS; MISCELLANEOUS CHARGES; ETHICAL STANDARDS.

2. Sec. 3.102, Public information, requests, and assistance, is amended by revising the section title and by revising paragraph (b) to read as follows:

§ 3.102 Public information, requests, and assistance; miscellaneous charges.

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(b) Diring the Commission's regular business hours, the public may examine in the Office of Public Information in Washington, D.C., copies of public information filed with the Commission. Photo copies of public material may be obtained through the public reference room. Fees charged for such copies are established by an annual contract between the Commission and a private company which does the work. Current schedules of fees for copying work are available from the Office of Public Information. Except for requests made by government agencies certification of copies of any official Commission record shall be accompanied by a fee of two dollars. Inquiries and orders may be made to that office personally, by telephone, or by mail.

(B) Subchapter B – Regulations under the Federal Power Act, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

1. The title of "Part 11 – Annual Charges" is revised to read as follows:

   PART 11 – ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

2. In "Part 32 – Interconnection of Facilities; Emergencies; Transmission to Foreign Country.", the section titles and introductory clauses of §§ 32.1 and 32.51 and the introductory sentence of § 32.22 are revised to read as follows:

   § 32.1 Contents of application; filing fee.

   Every application under § 202 (b) of the Act shall be accompanied by the fee prescribed in Part 36 of this Subchapter and shall set forth the following information:

   * * * * *

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§ 32.22 Application for permanent connection for emergency use; contents; form and style; filing fee; number of copies.

Application for Commission approval of a permanent connection for emergency use only shall be accompanied by the fee prescribed in Part 36 of this Subchapter and shall conform with the requirements of §§ 32.1 to 32.4, inclusive, and, in addition, shall state in full the reasons why such permanent connection for emergency use is necessary in the public interest.

§ 32.51 Contents of application; filing fee.

Every application shall be accompanied by the fee prescribed in Part 36 of this Subchapter and shall set forth in the order indicated, the following:

* * * * *

3. In "Part 33 – Application for Sale, Lease, or Other Disposition, Merger or Consolidation of Facilities, or for Purchase or Acquisition of Securities of a Public Utility", the title and introductory clause of § 33.2 are revised to read as follows:

§ 33.2 Contents of application; filing fee.

Each such applicant shall set forth in its application to the Commission, which shall be accompanied by the fee prescribed in Part 36 of this Subchapter, in the manner and form and in the order indicated, the following information which should, insofar as possible, be furnished as to said applicant and each company whose facilities or securities are involved:

* * * * *

[111]

4. In "Part 34 – Application for Authorization of the Issuance of Securities or the Assumption of Liabilities", the title and

introductory clause of § 34.2 are revised to read as follows:

§ 34.2 Contents of application; filing fee.

Every such applicant shall set forth in its application to the Commission, which shall be accompanied by the fee prescribed in Part 36 of this Subchapter, in the manner and form and in the order indicated, the following information which, in the case of the assumption of a liability, shall be furnished as to both the issuer and the person assuming liability:

* * * * *

5. In "Part 35 – Filing of Rate Schedules", between the heading "Application" and the section title " § 35.1 Application; obligation to file rate schedules", a new " § 35.0 Filing fees", is added which reads as follows:

§ 35.0 Filing fees.

Every filing made under this Part shall be accompanied by the fee described in Part 36 of this Subchapter.

6. Immediately following Part 35, a new "Part 36 – Annual Charges and Fees" is added which reads as follows:

PART 36 – ANNUAL CHARGES AND FEES UNDER PARTS II AND III OF THE FEDERAL POWER ACT

§ 36.1 Annual charges.

Reasonable annual charges shall be assessed by the Commission against each public utility to reimburse the United States for such costs of administration of Parts II and III of the Federal Power Act as hereinafter provided:

[212]

(a) A determination shall be made for each fiscal year of the costs of administration of the Commission's public utility regulatory programs (other than those associated with coordination and reliability) from which shall be deducted the allocable costs associated with services primarily

rendered to or for the benefit of electric systems which are not public utilities as defined in the Federal Power Act and the amounts received during the same period pursuant to the provisions of 36.2 of this Part. The difference shall constitute the adjusted costs of administration of such programs for such period.

(1) The adjusted costs of administration determined under paragraph (a) of this section shall be assessed against each public utility in the proportion that the gross jurisdictional kilowatt hours sold and kilowatt hours delivered under interchange power agreements by such public utility in the calendar year terminating in such fiscal period bear to the sum of the gross jurisdictional kilowatt hours sold and kilowatt hours delivered under interchange power agreements by all public utilities for the like period.

(b) A determination shall be made for each fiscal year of the costs of administration of the Commission's coordination and reliability programs from which shall be deducted the allocable costs associated with services primarily rendered to or for the benefit of electric systems which are not public utilities as defined in the Federal Power Act. The difference shall constitute the adjusted costs of administration of such programs for such period.

(1) The adjusted costs of administration determined under paragraph (b) of this section shall be assessed against each public utility in the proportion that the gross electric revenues of such public utility in the calendar year terminating in such fiscal period bear to the sum of the gross electric revenues of all public utilities for the like period.

(c) Annual charges assessed under this section shall be paid within 60 days of the rendition of a bill therefor by the Commission.

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§ 36.2 Filing fees.

A filing fee in the amounts set forth below shall accompany each of the following:

(213)

(a) Applications for physical connections $150

(b) Applications for the construction of border facilities $150

(c) Other corporate applications authorized by these regulations under the Federal Power Act $500

The provisions of this paragraph shall not apply to:

(1) applications under Part I of the Federal Power Act which are subject to the fees prescribed in Part 11 of these regulations,

(2) applications for the acquisition by merger or consolidation or the disposition by sale, lease or otherwise of electric facilities which are subject to the fees prescribed in paragraph (d) of this section, and

(3) applications for authority to hold interlocking positions which are subject to the fees prescribed in paragraph (h) of this section.

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(d) Applications by a public utility for the acquisition by merger or consolidation, directly or indirectly, of electric facilities of another person or for disposition by sale, lease or otherwise of electric facilities to another person . ½% of the value of such facilities, but not exceeding $5,000

(1) The fee prescribed by paragraph (d) of this section shall be shared by the public utilities acquiring and disposing of such facilities proportionately to the value of such facilities acquired or disposed of; the entire fee shall be

paid by a public utility acquiring or disposing of such facilities from or to a person not a public utility.

(e) Nominal rate schedule filings voluntarily filed other than those involving rate increases $100

(1) Examples of such filings include schedule changes having minimal impact on the operations of a public utility such as those providing service to an additional delivery point, changes in maximum obligation to serve, changes in minimum billing demand not affecting billings, changes in service rules or regulations not affecting billings, extensions of terms of contracts or continuation of service, cancellation of rate schedules where service is no longer needed, changes in delivery voltages or metering voltages, changes in contract provisions not affecting service,rates or

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billings, and adoption of initial rate schedules containing rates identical to rates applicable to the same customer class previously accepted for filing.

(f) Moderately complex rate schedule filings voluntarily filed $500

(1) Examples of such filings include schedule changes presenting more complex administrative problems such as those involving interconnection agreements, pooling agreements and additional large-scale sales.

(g) Rate schedule filings involving rate increases (computed on an annual basis) in excess of charges for the 12-month period

preceding the proposed effective date thereof, as follows:

(1) Nominal rate increases:

(i) Schedule changes involving increases in rates totalling less than $5,000 and one percent of the total charges to the persons to be affected thereby $100

(ii) Schedule changes involving increases in rates totalling less than $5,000 but not subject to the filing fee provided in subdivision (i) of this subparagraph and those involving increases in rates of $5,000 or more but not less than $50,000 ..... $500

(2) Rate increases other than those covered under subparagraph (1) of this paragraph:

(i) One percent of the amount of such increases up to but not exceeding $1 million;

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(ii) $10,000 plus ½ percent of the amount of such increases in excess of $1 million and not exceeding $10 million;

(iii) $55,000 plus ¼ percent of the amount of such increases in excess of $10 million.

(h) Applications to hold interlocking positions $100

§36.3 Miscellaneous

(a) Annual assessments and fee payments shall be made by check or money order to the Treasurer of the United States. No fees will be refunded unless within sixty days of the filing of an application or rate schedule filing in connection with which such fees have been paid such application or rate schedule filing has been voluntarily withdrawn by the applicant or rejected by the Commission as incomplete or for some other reason.

(b) An application or rate schedule filing submitted for the sole purpose of amending a pending application or rate schedule filing need not be accompanied by a fee in addition to that which accompanied the original submission, provided that if the later application or rate schedule filing would have upon initial filing required payment of a larger fee, such refiling shall be accompanied by an amount equal to the difference between both fees.

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(c) Where an application or filing seeks Commission authorization in the alternative or would otherwise be subject to the payment of more than one filing fee, only the highest fee shall be required.

§36.4 Accounting for fees paid pursuant to this Part.

A public utility subject to the provisions of this Part shall account for the assessments and fees paid by charging the amounts thereof to Account 928, Regulatory commission expenses.

7. In "Part 45 – Application for Authority to Hold Interlocking Positions", the title and introductory clause of §45.8 are revised to read as follows:

§45.8 Contents of application; filing fee.

Each application shall be accompanied by the fee prescribed in Part 36 of this Subchapter and shall state the following:

* * * * *

(C) Part 159, Subchapter E – Regulations under the Natural Gas Act, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

1. The title of "Part 159 – Fees for Certain Applications Filed Pursuant to the Natural Gas Act" is revised to read as follows:

(217)

PART 159 – FEES AND ANNUAL CHARGES UNDER THE NATURAL GAS ACT

2. In §159.2 Applications involving construction or acquisition of facilities, paragraphs (a), (b) and (d) are revised to read as follows:

§159.2 Applications involving construction or acquisition of facilities.

* * * * *

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(a) Within 30 days following issuance of notice of application, an amount equal to 65/1000 of 1 percent (0.00065) of the estimated cost of construction of new facilities or of facilities to be acquired;

(b) Within 30 days following grant of the certificate, an amount equal to 130/1000 of 1 percent (0.00130) of the estimated cost of construction of new facilities or of facilities to be acquired, unless applicant does not accept the certificate.

* * * * *

(d) If the actual cost of construction of new facilities or of facilities to be acquired exceeds the estimated cost thereof, the statement of actual cost, required to be submitted by § 157.20(c)(4) and (d)(3) of this chapter, shall be accompanied by an amount equal to 195/1000 of 1 percent (0.00195) of the excess of actual cost (plus estimated cost of facilities for which actual cost is not then recorded on the books of applicant) above estimated cost.

* * * * *

3. Immediately following § 159.2, a new "§ 159.2a Annual charges" is inserted which reads as follows:

§159.2a Annual charges.

Reasonable annual charges will be assessed by the Commission against natural gas companies to reimburse the United States for costs of administration of the Natural Gas Act, as hereinafter provided:

[219]

(a) A determination shall be made for each fiscal year of the costs of administration of the Commission's natural gas pipeline programs from which shall be deducted the amounts received during the same period pursuant to the provisions of §§ 159.1 and 159.2 of this Part. The difference shall constitute the adjusted costs of administration of such programs for such period.

(1) The adjusted costs of administration determined under paragraph (a) of this section shall be assessed against each Class A and Class B natural gas company in the proportion that the total jurisdictional gas deliveries of such natural gas company in the calendar year terminating in such fiscal period bear to the sum of the jurisdictional gas deliveries of all Class A and Class B natural gas companies for the like period.

(b) In addition to the annual charges prescribed by paragraph (a) of this section, each natural gas company required to file an Annual Report – Total Gas Supply on FPC Form No. 15 shall be assessed one-tenth (1/10) of a mill for each Mcf of new reserves certificated during the year covered by said report as shown for item 14 of such form.

(c) Annual charges assessed under this section shall be paid within 60 days of the rendition of a bill therefor by the Commission.

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4. In " §159.3 Miscellaneous", paragraph (a) is revised to read as follows:

§159.3 Miscellaneous.

(a) Method of payment. Annual assessments and fee payments shall be made by check or money order payable to the Treasurer of the United States. No fees will be refunded.

(D) The amendments herein adopted shall become effective July 1, 1971, except that annual assessments required to be paid under § 36.1(a) and § 159.2a (a) of these regulations shall first be assessed for the calendar year terminating in the fiscal year of the Commission ending June 30, 1972.

(E) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

(SEAL)

Commissioner Carver concurring in part and dissenting in part filed a separate statement appended hereto.

Kenneth F. Plumb,
Acting Secretary.

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Docket No. R-408 **APPENDIX**

The following companies and industry associations filed responses to the invitation contained in the Notice of Rulemaking in Docket No. R-408 (apart from those requesting additional time in which to do so):

Alabama Power Company
Algonquin Gas Transmission Company
Allegheny Power Service Corporation on behalf of seven public utilities
American Electric Power Service Corporation on behalf of seven public utilities
Arizona Public Service Company
Arkansas Power & Light Company
Carolina Power & Light Company
The Cincinnatti Gas & Electric Company
Colorado Interstate Gas Company
Columbia Gas System Service Corporation
Consumers Power Company
The Dayton Power and Light Company
Delmarva Power & Light Company of Maryland
Delmarva Power & Light Company of Virginia
Duquesne Light Company
Edison Electric Institute
Florida Power Corporation
Georgia Power Company
Gulf Power Company
Idaho Power Company
Illinois Power Company
Independent Natural Gas Association of America
Iowa-Illinois Gas and Electric Company
Iowa Southern Utilities Company
The Kansas Power and Light Company
Kentucky Utilities Company
Louisiana Power & Light Company
Michigan Gas Storage Company
Minnesota Power & Light Company

Mississippi Power Company
The Montana Power Company
Natural Gas Pipeline Company of America
New England Power Service Company on behalf of four public utilities
New Orleans Public Service Inc.

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Otter Trail Power Company
Pacific Gas and Electric Company
Pacific Power & Light Company
Pennsylvania Power & Light Company
Philadelphia Electric Company
Phillips Petroleum Company
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Southern California Edison Company
Texas Gas Transmission Corporation
United Natural Gas Company
Utah Power & Light Company
Washington Gas Light Company
Wisconsin Electric Power Company
Wisconsin Power & Light Company

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Docket No. R-408

CARVER, Commissioner, *concurring* in part and *dissenting* in part:
(Issued March 18, 1971)

I agree that sound public policy as well as the specific requirements of the Independent Offices Appropriation Act, 1952 dictate that the use of public resources and facilities and the receipt of certain services and functions of the government be supported by user fees or charges assessed against those benefited. The order promulgated herein is therefore well founded, required by law and the rates established bear a reasonable relationship to the cost of the services involved, and I join in approving it, except as to that portion of it which adds Part 36, relating to Annual Charges and Fees under Parts II and III of the Federal Power Act.[1] I cannot concur in that part of the order, and the reasons for my dissent are stated briefly below.

As a basic philosophical premise, I do not believe that general governmental functions, unrelated to special services or privileges extended by the sovereign, should be made self-sustaining through levies upon particular persons or industries. Regulation in the public interest is conducted for the benefit of the general public; it ought to be financed out of the general fund of the Treasury in the same manner as other governmental functions.

It is a fiction that this part of the fee structure falls upon the regulated companies. All regulatory costs are always includible in

[1] I recognize that some part of the schedule of fees applicable to natural gas companies is subject to the objections specified to inclusion of Part 36. I have chosen not to try to differentiate the acceptable from the unacceptable, as not necessary for the objectives of this dissent.

the cost of service, so that the incidence of these fees will fall upon the ratepayers. Although consumers of utility services are broadly representative of the total taxpaying public, it is notorious that utility rates are more favorably disposed toward the larger consumer. Thus, a heavier proportion of the fee burden will attach to those least able to pay. It is, in effect, a regressive impost which is contrary to the general tax philosophy at the Federal level.

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To the extent that Part 36, added to our regulations by this order, attempts to recover administrative costs above and beyond those that have direct relation to a service rendered or privilege enjoyed (such as an annual charge on some *ad valorem* basis), it ceases to qualify as an authorized regulation establishing a fee structure. It is based on revenue requirements, rather than costs incurred or value received, and as such is more accurately defined as levying a tax. I find nothing in either the Federal Power Act or the Natural Gas Act, nor in Title V, Independent Offices Appropriation Act, 1952, which permits or requires us to levy and collect taxes.

The levy of an annual fee as a revenue measure is objectionable as bad public policy and is not legally sound.

/s/ John A. Carver, Jr.
Commissioner

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Revision of Existing and	)	
Establishment of New Schedules	)	
of Fees to be Paid by Electric	)	
Public Utility Companies and	)	Docket No. R-408
Natural Gas Companies and for	)	
Miscellaneous Services Rendered	)	
by the Federal Power Commission	)	

APPLICATION FOR REHEARING
OF THE
EDISON ELECTRIC INSTITUTE

The Edison Electric Institute (Institute), the trade organization of the investor-owned electric public utility industry, hereby petitions under Section 313(a) of the Federal Power Act and Section 1.34 of the Commission's Rules of Practice and Procedure for rehearing of the Commission's Order No. 427 issued March 18, 1971 in the above entitled proceeding.

In response to the Commission's Notice of Proposed Rulemaking in this proceeding, the Institute filed comments in which it opposed a number of the proposed changes. the Institute also pointed out that there were a number of ambiguities as well as inequities in the proposals. Accordingly the Institute requested a conference to discuss the proposed rulemaking in which it as well as others could point out in greater detail the infirmities of the proposal.

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Specifically such a conference could include discussion of the following issues:

1. Which of the Commission's activities under Part II and Part III of the Act are primarily for the benefit of the regulated utilities and which are primarily for the benefit of the general public?

2. Does proposed Section 36.2 include all of the activities of the Commission under Part II and Part III of the Act which are primarily for the benefit of the regulated utilities and exclude all that are primarily for the benefit of the general public?

3. Is there any way, under the Act and Title V, to prescribe fees to cover all or any part of the cost of Commission activities under Part II and Part III of the Act which are not primarily for the benefit of the regulated utilities?

4. Are the fees set forth in proposed Section 36.2 reasonably related to the costs to the Commission of performing the activities to which they relate?

Instead of granting the request for conference the Commission issued Order No. 427 without giving the Institute the chance fully to present its views. If the Institute had anticipated that its request for a conference would not have been granted it would have filed more comprehensive comments.

WHEREFORE the Institute requests that this application for rehearing be granted, that a conference be held in which all interested parties would be invited to participate, and after such conference the Commission issue a new order in

this proceeding which will reflect the views expressed at the conference.

Respectfully submitted,
Edison Electric Institute

By
/s/ Peyton G. Bowman, III
Its Attorney

William H. Coldiron, Esq.
Montana Power Company
40 East Broadway
Butte, Montana 59701

Reid & Priest
1701 K Street, N.W.
Washington, D.C. 20006

April 13, 1971

DISTRICT OF COLUMBIA) SS:

PEYTON G. BOWMAN, III, being first duly sworn, deposes and says that he is attorney for The Edison Electric Institute; that he has been duly authorized to execute, verify and file with the Federal Power Commission the foregoing document; that he has read the contents of same and that the statements contained therein are true and correct to his best information, knowledge and belief.

By
/s/ Peyton G. Bowman, III

Subscribed and sworn to before
me this 13th day of
April, 1971.

/s/Lee S. Sherline
Notary Public

My commission expires Nov. 14, 1973.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of §1.17 of the Rules of Practice and Procedures.

Dated at Washington, D.C. this 14th day of April, 1971.

By
/s/Peyton G. Bowman, III

Of Counsel For
Edison Electric Institute

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and Natural Gas Companies and for Miscellaneous Service Rendered by the Federal Power Commission	)))))	Docket No. R-408

APPLICATION OF INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA FOR REHEARING

Comes now Independent Natural Gas Association of America (INGAA) and, pursuant to Section 19(a) of the Natural Gas Act (15 USC 717r(a))(Act) and Section 1.34 of the Regulations under the Act, submits its Application for Rehearing of Order No. 427, issued herein on March 18, 1971.

The person upon whom service of pleadings, documents or communications with respect to this matter should be made is:

Jerome J. McGrath, Vice President and General Counsel
Independent Natural Gas Association of America
1660 L Street, N. W.
Washington, D. C. 20036

I

INGAA is a non-profit national trade association representing virtually all of the major long distance natural gas transmission

lines in the United States, all of which are subject to the jurisdiction of the Commission under the Act. Most, if not all of these companies are directly affected by the

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Commission's Order No. 427 herein. Its membership also includes producers and distributors of natural gas.

II

In Order No. 427 the Commission has revised upward existing fees required in connection with pipeline certificate applications (§ 159.2) and has established new annual assessments to be paid by pipelines based on the cost of the Commission's administration of natural gas pipeline programs, after deducting fees received pursuant to §§ 159.1 and 159.2, and new fees based on gas reserves certificated to individual pipelines during the year as shown by FPC Form 15 for each company for the particular year to which the fee is related.

In its comments filed herein on February 10, 1971, INGAA challenged the legal propriety of the rule and the proposal of the Commission to load practically all of the costs of administration of the Natural Gas Act on pipeline companies. Such comments spelled out in detail the basis of INGAA's position and the infirmities, both legal and practical, infecting the Commission's proposal. Order No. 427, however, ignores and disregards completely INGAA's objections. INGAA submits, further, that Order No. 427 is arbitrary and capricious and beyond the authority given the Commission under the Act or any other statutory directive.

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III

It is INGAA's position that the Commission has no authority to require pipelines to pay the costs generally incurred by the Commission in its administration of the Natural Gas Act. In the

first place, the new fee assessments, apart from the increase in certificate filing fees, are unrelated to any special services or privileges extended to the pipeline companies by the Federal Government, i.e., the FPC. The general administrative functions carried out under the Natural Gas Act are conducted for the general public and, as Commissioner Carver noted in his dissent, ought to be financed out of the general fund of the Treasury in the same manner as other governmental functions. Secondly, as Commissioner Carver also noted, it seems apparent that the Commission is levying a tax against the pipeline companies as a revenue measure and not on the basis of costs directly related to a service rendered or privilege enjoyed.

IV

Underlying the Commission's order insofar as it related to "pipeline programs" is the assumption that a pipeline, in submitting rate filings, is seeking a special benefit from the government. Such as assumption is simply contrary to fact and to the fundamental objectives of the Act. As INGAA pointed out in its comments, the basic thrust of Section 4 of the Act is to provide just and reasonable rates for the benefit of the general public. The Commission recognized this to be the case when it first proposed the

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charging of fees in Docket No. R-282 in 1965. In its Notice of Proposed Rulemaking in that docket dated September 15, 1965, the Commission stated:

> "The Commission has reviewed its functions under the Federal Power Act and the Natural Gas Act and is of the opinion that the assessment of user charges or other fees with respect to the exercise of our regulatory activities under Parts II and III of the Federal Power Act and under the generally parallel rate and accounting provisions of the Natural Gas Act would not be appropriate since these activities are primarily for the benefit of the general public rather than the regulated companies." (Mimeo, cy. p.2)

Moreover, Circular No. A-25, issued by the Bureau of the Budget on September 23, 1959, and upon which the Commission in part relies, provides that as a matter of general policy "No charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public. . . . .". Clearly, the "beneficiary" of the Commission's "services" under Section 4 of the Act is not the filing company, but rather, the "general public". In point of fact, much of the Commission's activities in processing rate filings is generated by participation by parties other than the applicant. In many instances the time expended by the Commission and the staff is largely directed to resolving the issues raised by such participants. To load the costs of the administration of the Natural Gas Act on the pipeline companies, as Order No. 427 would do, INGAA submits, is inequitable, unfair and unduly discriminatory and contrary to the 1952 Appropriations Act and Circular A-25. The cost of securing those services should be paid

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out of general taxes, and not by an improper taxation, or "assessment" of the regulated companies.

V

Further, assessing pipelines for the cost of producer regulation patently and unduly discriminates between pipeline and producer and is otherwise unlawful. The sole basis of the Commission's action, as indicated by the Notice, is "administrative convenience". There is, however, no legal justification for such action. The law is clear that fees are to be assessed against "identifiable recipients" of special benefits. Circular A-25 specifically provides that

> "3. *General policy.* A reasonable charge, . . . should be made to *each identifiable recipient* for a measurable unit or amount of Government service or property

from which he derives a special benefit." (emphasis supplied)

The costs of producer regulation, INGAA submits, should be borne by the producer segment of the industry which generates such costs and not the pipelines. The Commission thus erred in loading such costs on the pipeline companies who benefit only indirectly from producer regulation.

VI

Assuming, arguendo, the validity of the Commission's action here, the pipelines have no way of knowing what the "programs" are for which they are to be assessed, what the costs are or what proportionate assessment will be made against each company. There is no way a company can even begin to appraise the impact on it or to determine how much money

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it will have to pay annually to the Commission. At the very least the Commission should advise the companies not only of the cost to be recovered but the basis for their determination and make provision for a tracking procedure by which the companies can file timely protective rate increases to cover such costs. Order No. 427 is silent in this regard. INGAA urges, therefore, that Order No. 427 be modified so as to specifically permit the filing of tracking increases by pipelines to enable the companies to recover, over the next ensuing twelve months, the costs assessed against them.

VII

INGAA does not agree that deliveries of gas provide a "fair and equitable" basis for allocating costs among jurisdictional companies. As noted in the comments filed previously herein, there is no basic equity or fairness in the relationship between a particular company's deliveries and the total deliveries of all companies. At best, the ratio merely reflects the company's

operations versus the multi-company industry structure for handling deliveries of gas. Thus, any total delivery figure for all Class A and B companies (upon which individual company proportions may be based) will involve double or triple counting of the same gas volumes depending on the number of Class A or B companies in the chain from producer to city gate. As such, the individual company's proportionate position is more a matter of accident than equity or fairness. All of which

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points up again the basic inequity of the Commission's Order.

CONCLUSION

The Order of the Commission imposing all of the costs of administration of the Natural Gas Act on jurisdictional gas pipeline companies is beyond the directives of Congress relating to user charges and is arbitrary and capricious. The general public is the true beneficiary of the regulatory scheme embraced in the Act and the public should share along with the pipelines the costs of administering the Act. INGAA urges the Commission to grant rehearing and, upon rehearing vacate Order No. 427 insofar as it would impose annual assessments on pipelines for costs incurred in the overall administration of the Natural Gas Act and the costs related to producer regulation. Further, and in any event, Order No. 427 should be modified so as to provide for tracking procedures so that pipelines may track fees imposed on such companies on a timely basis.

Respectfully submitted,
INDEPENDENT NATURAL GAS
ASSOCIATION OF AMERICA
/s/ By Jerome J. McGrath
Vice President and
General Counsel

Washington, D. C.
April 16, 1971

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CITY OF WASHINGTON)
) SS
DISTRICT OF COLUMBIA)

Jerome J. McGrath, being first duly sworn according to law, says that he is Vice President and General Counsel of Independent Natural Gas Association of America; that he has read the foregoing Application for Rehearing and is familiar with the contents thereof; and that he has executed same on behalf of said Association with full power and authority to do so.

/s/ Jerome J. McGrath
Jerome J. McGrath

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 16th day of April, 1971.

/s/ Etha T. Connor
Notary Public

My Commission Expires August 14, 1974

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and Natural Gas Companies and for Miscellaneous Services Rendered by the Federal Power Commission	)))))	Docket No. R-408

APPLICATION FOR REHEARING AND RECONSIDERATION

COMES NOW the Southern California Edison Company and respectfully applies to the Commission for a rehearing and reconsideration of its Order No. 427 issued March 18, 1971, in Docket No. R-408. Such application is based upon the grounds that the modifications made in such order to the rules originally proposed by the Commission in its notice of proposed rulemaking dated November 25, 1970, do not cure all the legal errors in the action taken by the Commission. Order No. 427 of the Commission is defective in a number of respects, including the following:

1. The order exceeds the jurisdiction of the Commission.

2. It is neither lawful nor appropriate for the Commission to attempt to allocate among all the utilities it regulates its residual costs of administration of Part II and

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Part III of the Federal Power Act.

3. As indicated in the dissenting portions of the opinion of Commissioner Carver, the portions of Order No. 427 that attempt to recover administrative costs above and beyond those that have direct relation to a service rendered or a privilege enjoyed do not properly qualify as fees, but are rather in the nature of taxes which the Commission cannot properly levy and collect. In this connection, the Commission, in its Order No. 427, purports to rely upon case law, indicating that "a fee is always voluntary, in the sense that the party who pays it originally has, of his own volition, asked a public officer to perform certain services for him, which presumably bestow upon him a benefit not shared by other members of society"; it may be fairly stated that insofar as the regulated utilities are concerned, Parts II and III of the Federal Power Act are about as voluntary as participating in the federal income tax.

4. Order No. 427 is unlawfully discriminatory.

a. No distinction is drawn between utilities whose security issues require Federal Power Commission authorization under Part II of the Act and those whose do not.

b. The order would have an effect similar to adding an additional tax at the federal level on

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investor-owned utilities based upon revenues having no demonstrable relationship to the services alleged to be rendered, and could conceivably tend to erode both the personnel and efficiency factors in the carrying on of the functions of the Commission and the budgetary controls of the Congress over such operations.

5. The order was issued by the Commission in a manner which is contrary to the fundamental concepts of due process of law, and is arbitrary and unreasonable.

a. The notice of proposed rulemaking, while indicating that the Commission had "thoroughly reviewed the existing fee structure and the areas of our administrative operations which have not heretofore been subject to any charges" and that the manner in which allocations whould be made with respect to the Commission's functions under Parts II and III of the Federal Power Act had "been the subject of much study" and indicating that the Commission believed that its proposals "not only spread those costs fairly and equitably but that they are consistent with the legislative and executive mandates we are required to carry out", there was nothing in the notice to indicate

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in any way what was in the Commission's study to motivate such belief or to support such conclusion. The notice did contain an invitation to persons filing comments to request a conference at the Federal Power Commission to discuss the proposed amendments. Requests for such a conference

were filed by a number of persons, including the applicant herein. (See letter dated December 15, 1970, to the Commission from Southern California Edison Company.) No such conference was ever set, but instead Order No. 427 was peremptorily issued on March 18, 1971, despite the fact that applicant is informed and believes and, based upon such information and belief, alleges that representatives of the Commission that a conference would be held upon such requests.

b. While recognizing that jurisdictional sales for resale by many public utilities are relatively small compared to their total revenues and that inequities would result if assessments covering all programs under Parts II and III of the Federal Power Act were based entirely on gross revenues as previously proposed, the Commission has revised its rule

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but, in so doing, has asserted that costs will be allocated to coordination and reliability on the basis of gross revenues. There is no indication in the order as to how the allocation of costs between their "residual" regulatory actions and their actions involving coordination and reliability are to be segregated or determined.

c. There is no finding or determination in the order indicating the alleged benefits bestowed upon the utilities by Parts II and III are not shared by other members of society.

6. The undersigned does not subscribe to the view that the present financial condition which public utilities and natural gas companies have achieved is attributable to the "benefits" (both positive and negative) provided them by Parts II and III of the Federal Power Act primarily benefit the public utilities, and would seriously question that there was substantial evidence to support any such determinations.

7. The order unlawfully and unconstitutionally denies investor-owned public utilities and their customers, respectively, equal protection of the laws and deprives them of property without due process of law in violation of Article V of the United States Constitution (see *Bolling v. Sharpe*, (1953) 347 U.S. 497, 74 S. Ct. 693; and *Todd v. Joint Apprenticeship Committee*,

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(1963) 223 Fed. Supp. 12, 19).

For these reasons, it is respectfully requested that the Commission reconsider its Order No. 427, grant a rehearing, schedule a conference at which full and fair discussion of the proposed amendments may be had, and prior thereto, as heretofore requested by applicant, furnish the participants with a copy of the study referred to in the Commission's notice upon which the Commission bases its belief that its proposals spread the costs fairly and equitably and consistent with the legislative and executive mandates.

The name, title and mailing address of the person to whom communications concerning this application should be sent is as follows:

Rollin E. Woodbury
Vice President and General Counsel
Southern California Edison Company
Post Office Box 351
Los Angeles, California 90053.

Respectfully submitted,

SOUTHERN CALIFORNIA EDISON COMPANY

/s/ By Rollin E. Woodbury

Vice President and General Counsel

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

ROLLIN E. WOODBURY, being first duly sworn, on oath, says that he is Vice President and General Counsel of Southern California Edison Company; that he has read the foregoing Application for Rehearing and Reconsideration of Commission's Order No. 427, and that he is familiar with the contents thereof; that, as such officer, he has executed the same for and on behalf of said Company with full power and authority to do so; and that the matters and facts set forth therein are true to the best of his information, knowledge and belief.

/s/ Rollin E. Woodbury

Subscribed and sworn to before me
this 14th day of April, 1971.

/s/ Dona Mary Wilcomb
Dona Mary Wilcomb
Notary Public in and for said County and State
My Commission expires June 27, 1973.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure.

Dated at Los Angeles, California, this 14th day of April, 1971.

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/s/ Rollin E. Woodbury

ROLLIN E. WOODBURY

Of counsel for
Southern California Edison Company

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

In the Matter of	)	
	)	
Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and for Miscellaneous Services Rendered by the Federal Power Commission	)	Docket No. R-408

APPLICATION FOR REHEARING
OF TENNESSEE GAS PIPELINE COMPANY,
A DIVISION OF TENNECO INC.

Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), being aggrieved by the Federal Power Commission's Order No. 427 in the above proceeding, hereby applies for rehearing pursuant to Section 19 (a) of the Natural Gas Act.

I.

The Independent Natural Gas Association of America (INGAA), in response to the Notice of Proposed Rulemaking in this proceeding, filed views and comments with the Commission pointing out, *inter alia*, that the proposed annual charges to be assessed against pipelines were contrary to the policies of the Natural Gas Act and the provisions of the 1952 Appropriations Act.

INGAA further showed that the terms of the proposed annual assessment regulations posed such basic uncertainties and left so many questions unanswered that it was virtually impossible to meaningfully comment in response to the notice. Accordingly, *inter alia,* INGAA requested the Commission to re-notice the proposed rulemaking setting forth on a definitive basis the costs and the method of deriving

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the costs which each year the natural gas pipeline industry would be required to meet by payment of annual "cost" and "reserve-added" assessments. INGAA further argued that the proposed annual assessments were in many respects discriminatory, unfair and inequitable. Tennessee expressly adopted and endorsed INGAA's comments by letter to the Commission dated February 10, 1971. By this application for rehearing, Tennessee hereby re-asserts all the points raised by INGAA's comments as above indicated and incorporated by reference those comments, *mutatis mutandis,* as a part of this application for rehearing of Order No. 427.

II

In addition, however, Tennessee objects to Order No. 427 on grounds that it is unfair and inequitable to, and unlawfully discriminates against, pipelines, such as Tennessee, with a high percentage of "jurisdictional gas deliveries." By order No. 427, the Commission, without prior notice, specified that the annual cost of pipeline regulation (less certificate application fees) shall be allocated on the basis of "jurisdictional gas deliveries" of each pipeline, as originally proposed. The effect, of course, is to shift a further portion of the cost of pipeline regulation to those pipelines with a high percentage of jurisdictional deliveries, and away from pipelines with

significant direct sale loads.[1] There is

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no rational or factual basis for the change in method of allocation from that originally proposed, other than some imagined need for symmetry in the treatment of pipelines and electric utilities. Plainly, the operations and structures of electric utilities for jurisdictional purposes provide no basis for relieving those gas pipelines with significant direct sale loads or which transport substantial quantities of gas for others and technically might not make "jurisdictional deliveries" of such gas, from sharing proportionately in the reimbursement of the Commission for the cost of regulation. Indeed, some of the Commission's most significant problems relate to direct sales by pipelines and to the transportation of gas where no "jurisdictional deliveries" may actually be made.

III

Tennessee further objects to the rule because there is no rational connection between the various Commission "findings" (e.g., pp. 11 and 12) and the ultimate conclusion that natural gas pipeline companies should bear the cost of pipeline and producer regulation under the Natural Gas Act. Moreover, there was no evidence to support the "findings" which were made.

WHEREFORE, for all the foregoing reasons, Tennessee respectfully submits that the Commission should grant rehearing and upon rehearing set aside its Order No. 427 insofar as that order establishes annual assessments to be paid by natural gas pipelines.

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[1] While such deliveries may be non-jurisdictional, the Commission nevertheless must consider such sales when fixing the pipelines' rates and in passing on applications for certificate authority to construct and operate facilities for use in making such sales.

Respectfully submitted,

TENNESSEE GAS PIPELINE COMPANY
A DIVISION OF TENNECO INC.

Harry S. Welch
Philip Endom
P.O. Box 2511
Houston, Texas
77001

/s/ By Harold L. Talisman

Harold L. Talisman
Littman and Werner
1001 Connecticut Ave., N.W.
Washington, D. C. 20036

Of Counsel

April 16, 1971

Its Attorney

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District of Columbia : ss

Harold L. Talisman, being first duly sworn according to law, says that he is an attorney for Tennessee Gas Pipeline Company, a Division of Tenneco Inc; that he has read the foregoing Application for Rehearing of said company, and is familiar with the contents thereof; that he has executed the same for and on behalf of said Tennessee Gas Pipeline Company, a Division of Tenneco Inc., with full power and authority so to do; and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

/s/ Harold L. Talisman

Harold L. Talisman

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 16th day of April, 1971.

My Commission Expires:
February 28, 1975

/s/ Louise H. Parmer

Louise H. Parmer
Notary Public

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I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of § 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D.C., this 16th day of April, 1971.

/s/ Harold L. Talisman

Harold L. Talisman

Of Counsel for
Tennessee Gas Pipeline Company,
a Division of Tenneco Inc.

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and and for Miscellaneous Services Rendered by the Federal Power Commission	(	Docket No. R-408

PETITION BY
THE MONTANA POWER COMPANY
FOR REHEARING

In response to the notice of proposed rulemaking in the above Docket, The Montana Power Company submitted Comments to the Commission on January 20, 1971 and requested a conference at the Federal Power Commission with regard to such Comments and the Comments filed by other parties. No such conference was scheduled by the Commission.

On March 18, 1971 the Commission issued its Order No. 427 in the above Docket amending certain of its rules and adding to those rules Part 36 establishing Annual Charges and Fees under Parts II and III of the Federal Power Act.

Petitioner still believes that a conference at the Federal Power Commission among parties who will be adversely affected by the amended and new rules and regulations prescribed in said Order No. 427 would be useful and beneficial.

WHEREFORE, Petitioner, pursuant to Section 3.13 (a) of the Federal Power Act, applies for a rehearing on Order No. 427 in Docket No. R-408 on the following grounds:

(1) Order No. 427 imposes burdensome fees and charges upon

public utilities and licensees subject to the jurisdiction of the Commission.

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(2) Said Order No. 427 imposes burdensome fees and charges based upon utility revenues which are not subject to the jurisdiction of the Federal Power Commission.

(3) The fees and charges proposed to be imposed by the Commission's Order No. 427 will be expenses which must be borne by customers of Petitioner and other utilities for services not subject to the Commission's jurisdiction.

(4) No hearing was afforded Petitioner and other parties similarly situated.

Respectfully submitted this 14th day of April, 1971.

THE MONTANA POWER COMPANY

/s/ By William H. Colderon

Vice President

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Revision of Existing and Establish ment of New Schedules of Fees to be Paid by Electric Public Utility Companies and for Miscellaneous Services Rendered by the Federal Power Commission	))))))	Docket No. R-408

APPLICATION FOR REHEARING
SUBMITTED BY NEW ENGLAND POWER COMPANY

Name and address of representative for service:

Richard B. Dunn, General Counsel
New England Power Company
20 Turnpike Road
Westborough, Massachusetts 01581

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and for Miscellaneous Services Rendered by the Federal Power Commission	)	Docket No. R-408

APPLICATION FOR REHEARING
SUBMITTED BY NEW ENGLAND POWER COMPANY

On March 18, 1970 the Federal Power Commission issued Order No. 427 revising existing and establishing new schedules of filing fees to be paid by jurisdictional companies and establishing formulae for charging jurisdictional companies for the remaining costs of administration other than in connection with certain services primarily rendered for non-jurisdictional entities.

Pursuant to Section 313(a) of the Federal Power Act and Section 1.34(a) of the Commission's Rules of Practice and Procedure, New England Power Company (the "company") respectfully applies for rehearing of Order No. 427, upon the grounds set forth hereinafter, and requests (1) an evidentiary hearing of the factual issues susceptible of

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proof and (2) an opportunity to file a brief in response to the new legal and policy considerations resulting from the issuance of said Order No. 427.

The Company is an interstate wholesale generation and transmission company and is the wholesale supplier of substantially all the electric energy requirements of its affiliates, Massachusetts

Electric Company, The Narragansett Electric Company and Granite State Electric Company, all of said companies and the Company being subsidiaries of New England Electric System, a registered holding company under the Public Utility Holding Company Act of 1935.

I

The method of allocation of annual charges among the respective public utilities as set forth in new Section 36.1 fails to meet the fair and equitable standard set forth in 31 USC 483a, 65 Stat. 290, for a variety of reasons including:

1. As compared to an independent public utility, it unfairly penalizes a public utility that is a member of an intergrated electric holding

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company system under Title I of the Public Utility Act of 1935, the very Act which by Title II added Parts II and III of the Federal Power Act.

2. As compared to a vertically intergrated public utility company which normally sells a large percentage of its kilowatt hours to customers for consumption - non-jurisdictional kilowatt hour sales, it unfairly penalizes a generation and transmission company (such as the Company) which supplies the entire kilowatt hour needs of its associate companies – jurisdictional kilowatt hours.
3. By inclusion of gross kilowatt hours under interchange power agreements new Section 36.1(a) will add to the cost of power so interchanged and tend to discourage coordination of electric utility systems, contrary to the Congressional mandate in Section 202(a) of the Federal Power Act. Further, such kilowatt hours under interchange power agreements relate to coordination

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and reliability, the administrative costs of which are covered by Section 36.1(b).

II

The assessment of costs of administration in excess of those directly related to a service rendered or privilege enjoyed constitutes the levy of taxes beyond the powers of the Federal Power Commission. As previously stated by the Commission:

> " . . . the assessment of user charges or other fees with respect to the exercise of our regulatory activities under the generally parallel rate and accounting provisions of the Natural Gas Act would not be appropriate since *these activities are primarily for the benefit of the general public rather than the regulated companies.*" (Emphasis supplied). Notice of Proposed Rulemaking, Docket No. R-282, issued September 15, 1965, mimeo, page 2. (30 F.R. 12077, September 22, 1965).

III

An evidentiary hearing will establish the facts showing the lack of fairness and equity of the new Section 36.1, with respect to a generation and transmission company within a public utility holding company system, and demonstrating the economic influence of that Section upon the configura-

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tion of generation ownership within a holding company system and the power transactions between utility systems. Such a hearing is required by due process of law.

WHEREFORE, the Commission should grant a rehearing of its Order No. 427 and provide (1) for an evidentiary hearing as to factual matters and (2) an opportunity for the Company to brief the legal and policy considerations referred to above. Pending a

final decision in this rulemaking proceeding, the effective date of the Rule should be stayed.

Respectfully submitted,

NEW ENGLAND POWER COMPANY

/s/ Guy W. Nichols

Guy W. Nichols
President

20 Turnpike Road
Westboro
Massachusetts 01581

April 15, 1971

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Verification

The Commonwealth of Massachusetts
County of Worcester, ss.

The undersigned, Guy W. Nichols, being first duly sworn, states that he is President of New England Power Company, the applicant in the foregoing application for rehearing; that he has read said application and knows the contents thereof and that all the statements contained therein are true and correct to the best of his knowledge and belief.

/s/ Guy W. Nichols

Guy W. Nichols

Subscribed and sworn to before me this 15th day of April, 1971

/s/ Richard B. Dunn

Richard B. Dunn, Notary Public
My Commission expires May 22, 1975

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;
Lawrence J. O'Connor, Jr.,
John A. Carver, Jr.,
and Albert B. Brooke, Jr.

Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and Natural Gas Companies and for Miscellaneous Services Rendered by the Federal Power Commission	)	Docket No. R-408

ORDER DENYING REHEARING

(Issued May 14, 1971)

On November 25, 1970, we issued a Notice of Proposed Rulemaking in this proceeding (35 F.R. 18234, December 2, 1970) proposing to amend the general rules and regulations under the Federal Power Act and the Natural Gas Act to revise the schedule of fees proposed in connection with the filing of certain applications by natural gas companies and to establish new schedules of fees to be applicable to electric utility companies and natural gas companies.

We invited the submission of comments and suggestions by December 16, 1970, but pursuant to requests for additional time the return date was twice extended ultimately to February 5, 1971. Responses on the merits were timely received from 62 companies and two industry associations raising questions as to the meaning of various proposed revisions of our regulations, suggesting modifications for clarification or in the policy underlying the proposed changes in fee requirements, and objecting on various

grounds to the

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imposition of fees or assessments generally or as to specific items. The comments and recommendations were considered by the Commission and were in substantial part discussed in Order No. 427, which we issued on March 18, 1971, amending our regulations.

Two industry associations, Edison Electric Institute (EEI) and Independent Natural Gas Association of America (INGAA), and four companies, Montana Power Company (Montana), New England Power Company (New England), Southern California Edison Company (Southern California), and Tennessee Gas Pipeline Company (Tennessee), have filed a petition and applications for rehearing, three of them, EEI, Montana, Southern California, on the ground that a conference which the notice of proposed rulemaking stated could be requested was not provided. That notice did not state that a conference would be afforded responsive parties but invited "[s]ubmissions to the Commission [of data, views, comments, and suggestions, in writing] * * * and whether the person filing them requests a conference at the Federal Power Commission to discuss the proposed amendments." It stated also that the "Commission shall consider all such written proposals before acting on the matters herein proposed."

Neither the Administration Procedure Act, 5 USC 553, nor our rules, nor the statutory authority upon which this action was taken require that conferences be held in connection with rulemaking proceedings of this kind. The only requirement relevant here is that after notice of proposed rulemaking, "the agency shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments *with or without* opportunity for oral presentation * * *". (Emphasis supplied.) 5 USC 553(c).

It is our announced procedure that the Secretary or staff counsel upon the approval of the General Counsel and the Office or Bureau involved may call a public conference at which all parties who filed comments are invited to participate. As we

show, the grounds in sum urged by these three responding parties were in substance previously asserted in their comments or in the comments of other responding parties and were

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considered by the Commission when the order was adopted. In these circumstances, we find no basis for holding that the staff abused its discretion in not scheduling a conference to discuss their objections.

EEI's application essentially amounted to a reiteration of the same grounds contained in the comments it had previously submitted and of which the Commission was apprised and which it considered when the order was issued. Its statement that it would have filed more comprehensive comments had it anticipated that a conference would not be held carries no weight since the purpose of a conference is to discuss the issues previously raised in the comments submitted in response to an invitation therefor in the notice of proposed rulemaking.

The contention (INGAA, New England, Southern California and Tennessee) that the amended regulations constitute a revenue measure and are violative of the Appropriation Act and Budget Circular A-25 on which they were based does not raise issues which were not fully considered when Order No. 427 was adopted, nor do the allegations of these petitioners suggest valid grounds for rehearing or reconsideration.

Montana and Southern California raise contentions regarding the fairness of the assessment of fees and charges on jurisdictional public utilities and licensees and upon nonjurisdictional revenues and further contend such fees and charges will be unlawfully borne by customers for services not subject to the Commission's jurisdiction. We initially proposed to collect fees and assessments for all the costs of administering Parts II and III of the Federal Power Act upon jurisdictional utilities, in part for specific services rendered in connection with prescribed applications and filings, and in remainder on the basis of the

proportion that the gross revenues of each regulated company bears to the total gross revenues of all such companies. As a result of the comments and suggestions submitted we agreed that such allocation would be inequitable since the nature of our administrative activities regarding utility regulation and those concerned with coordination and reliability could not both be fairly attributed to gross revenues.

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In the first place, the costs of our administrative activities properly allocable to municipal and other nonregulated systems for either group of programs should not and will not be charged to jurisdictional utilities; secondly, the balance of the costs of administering the regulatory functions (after deduction of fees obtained for specific applications and filings) will more equitably be based on transfers of jurisdictional energy since the quantum of our services more nearly varies with the sales and deliveries of such energy; and, finally, the costs incurred in the promotion of greater coordination and reliability, being system wide and beneficial to a utility without regard to its jurisdictional business, are fairly allocable on a gross revenue basis.

However, New England asserts that as compared to a vertically integrated public utility which normally sells a large percentage of its (nonjurisdictional) kilowatt hours to customers for consumption, the regulation adopted unfairly penalizes a generation and transmission company which supplies the entire (jurisdictional) kilowatt hour needs of its associate companies principally for distribution. We considered the objection submitted by New England to the allocation of all costs of electric administration on the basis of gross revenues in response to our invitation for comments and in acknowledgment of the unfairness of the provision made appropriate revision, as described above, to avoid making annual charges to cover the costs of public utility regulation on the basis of gross revenues.

We think further revision is not required. Where the associated companies are solely in the business of distributing electric energy

not subject to Commission jurisdiction, no fees or other charges will be required of them and where they may have a limited amount of jurisdictional business the duplicative charges will be of little significance. In cases where jurisdiction attaches the services rendered which are subject to the specific fee schedules set out in Section 36.2 will not

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be charged to utilities under the assessment provisions of Section 36.1. As to the remainder of the administrative costs of the regulatory programs (less that applicable to nonjurisdictional electric systems), the Commission's programs involve rate surveillance, accounting matters and formal proceedings including rulemaking matters. These activities are conducted for all jurisdictional utilities and we can think of no more equitable method of allocating those charges than on the basis of jurisdictional sales and deliveries of electric energy.

The jurisdiction conferred by the Federal Power Act is based on the transmission and sale at wholesale of electric energy in interstate commerce and were we to make allocations on a basis which exempted this applicant and others having the same corporate arrangement from their proportionate shares of the charges, such action would not be consistent with our responsibilities under that Act.

New England's contention that the inclusion of the costs of electric utility regulation will add to the cost of power which is interchanged and hence discourage coordination among utilities is recognized. However, we believe it will have no significant effect in view of the benefits accorded electric systems by the advantages interconnection provides in enhancing the reliability of service.

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INGAA, Tennessee, and New England rely on dicta of the Commission in its notice of proposed rulemaking that culminated in the adoption of Order No. 317, as amended by Order 317-A, 31 F.R. 430, 4890, which added Part 159 to the Regulations under the

Natural Gas Act, as indicative of the Commission's lack of authority to broaden the scope of its charges to provide for the recoupment of certain costs of administration by assessment methods. We were mindful of these views but do not consider them binding upon us. These regulations, as our order pointed out, are predicated on the benefits accorded public utilities and natural gas companies by the creation of regulatory agencies at the federal level and the exercise of the powers delegated to them by the Congress which in our opinion satisfy the statutory requirements for the imposition of these charges.

INGAA's and Tennessee's objection to assessing pipelines for the cost of producer regulation is much too broadly put. The assessment is limited to only one of the various producer programs: the certification of producer sales which plainly benefit pipelines through the Commission's control of the initial prices they are required to pay producers for gas purchases. The Commission's activities in this connection which provide clear benefits to pipelines through regulatory action include the issuance of temporary certificates to expedite deliveries, the elimination of indefinite price escalation provisions, and the control over the quality of natural gas to be delivered and the length of the period in which supplies may be delivered where advance payments are made by the pipelines.

Both Tennessee and INGAA challenge the fairness of allocating charges on the basis of jurisdictional deliveries. One objection is that no part of the assessments are based on direct sales by pipelines to industrial customers which are nonjurisdictional. We point out that the entire costs of administering the pipeline programs are not assessed on

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the basis of jurisdictional deliveries since a substantial part thereof are made up by certificate application fees filed in connection with the construction of pipeline facilities. In this way, a significant portion of expenses of administering the pipeline programs will be made up by payments for the installation of facilities to

serve nonjurisdictional customers.

Another objection is that the method of allocation is unfair because it includes deliveries of natural gas between pipelines which, it is argued, sometimes involve double or triple counting of the same volumes of gas. While our method of allocation is somewhat imperfect, we think it is a reasonable method of allocating the portion of pipeline administration costs not obtained from certification of facilities and that it does not work a hardship on the pipelines. The fees paid in this connection by the pipelines form part of their lawful operating costs each pipeline may recover from the purchaser of their gas. More importantly, where several pipelines are involved seriatim in the delivery of the same volumes of gas, the regulatory responsibilities of the Commission are correspondingly increased.

Several of the applicants seek rehearing on the ground that there is no way to approximate the extent of the costs of regulation each utility or gas company will be obligated to pay. We do not think these objections meritorious. The basis for determining the fees to be charged in connection with miscellaneous matters, specified applications and filings, and assessments relating to new gas supplies are clearly set forth in Sections 3.102 (b), 36.2, 159.1 and 159.2a(b) of the Regulations. The remaining assessments predicated on the costs incurred in each fiscal year can be readily approximated from these sources: published data supplied by the Commission annually to the Congress in support of its request for appropriations which show the allocation to be made for each electric and gas program and information published by the Commission showing the gross revenues and sales and deliveries of electric energy by electric systems and jurisdictional sales of natural gas companies.

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The Commission finds:

The assignments of error and grounds for rehearing and reconsideration set forth in the applications of EEI, INGAA, New

England, Southern California and Tennessee and in the petition of Montana which were filed in this proceeding present no facts or legal principles which were not fully considered by us, or which now being reconsidered by us would warrant any change or modification of the Commission's Order No. 427, issued March 18, 1971.

The Commission orders:

The petition and applications for rehearing and reconsideration of Order No. 427 are denied.

By the Commission. Commissioner Carver dissenting filed a separate statement appended hereto.

(S E A L)

Kenneth F. Plumb,
Acting Secretary.

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Revision of Existing and Establishment of New Schedules of Fees to be Paid by Electric Public Utility Companies and Natural Gas Companies and for Miscellaneous Services Rendered by the Federal Power Commission	))))))	Docket No. R-408

(May 14, 1971)

CARVER, Commissioner, dissenting:

This order is addressed essentially to those portions of Order No. 427 which I found unacceptable in my separate opinion in that docket, leaving me no alternative but to dissent herein.

/s/ John A. Carver, Jr.,

John A. Carver, Jr., Commissioner

In the Supreme Court of the United States

No. 72-1162

FEDERAL POWER COMMISSION, PETITIONER

v.

NEW ENGLAND POWER COMPANY, ET AL.

Order Allowing Certiorari

Filed May 14, 1973

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

The case is set for oral argument with No. 72-948.